United States Court of Appeals

for the Second Circuit

EXHIBITS

DESIGNATED GENERAL COUNSEL EXHIBITS

VOLUME IV

(16k-o)

GENERAL COUNSEL'S EXHIBITS

Volume IV

Exhibit	Description
16k.	Transcript of disciplinary trial of Frank Paris.
16 l.	Transcript of disciplinary trial of Coles Trapnell with attached letter of 3/6/73.
16m.	Transcript of disciplinary trial of Robert Blees with declaration of 5/31/73.
16n.	Transcript of disciplinary trial of John Mantley with attached declaration of 5/31/73.
16o.	Transcript of disciplinary trial of David Victor.

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.,

Petitioner,

vs.

FRANK PARIS,

Respondent.

No._____.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

May 24, 1973

Reported by:

Carol J. Gertz, CSR

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
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Petitioner,)
)
vs.)
)
FRANK PARIS,)
)
Respondent.)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of petitioner, at 8955 Beverly Boulevard, Los Angeles, California, commencing at 10:45 A.M., Thursday, May 24, 1973 before Carol J. Gertz, CSR - Notary Public.

TRIAL COMMITTEE:

CHRISTOPHER KNOPF, Chairman

JAMES POE

NATE MONASTER

MICHAEL BLANKFORT

EMMET LAVERY

APPLARANCES:

FOR PETITIONER:

JOHN A. MENDONSA, Esq.
8955 Beverly Boulevard
Los Angeles, California 90048

FOR RESPONDENTS:

ROBERT A. HOLTZMAN, Esq.
SAUL D. RITTENBERT, Esq.
LOEB and LOEB
One Wilshire Building
Los Angeles, California 90017

FOR WITNESS SHANE:

ALLEN E. SUSMAN, Esq.
ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard, Suite 444
Beverly Hills, California 90210

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LOS ANGELES, CALIFORNIA, THURSDAY, MAY 24, 1973

10:45 A.M.

---oOo---

MR. KNOPF: This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc., versus Frank Paris. This matter is being heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, Christopher Knopf, Chairman.

Will the parties please state their appearances for the record.

MR. MENDONSA: John A. Mendonsa appearing on behalf of the Executive Director of the Writers Guild of America, West, Inc.

MR. HOLTZMAN: For the Respondent Frank Paris, Robert A. Holtzman and Saul N. Rittenberg of the law firm of Loeb and Loeb, Los Angeles and Beverly Hills, California.

MR. KNOPF: Are there any other appearances to be made in this matter?

(No response.)

MR. KNOPF: These are closed hearings. Anyone not specifically connected with the proceedings will be asked to leave.

Before introducing the Trial Committee exhibits, I have come to anticipate certain motions from Mr. Holtzman.

Mr. Holtzman?

MR. HOLTZMAN: Thank you, Mr. Chairman.

In accordance with the practice we have developed over the series of hearings, we desire to place upon the record of this proceeding certain motions and objections. These motions were fully made and argued in prior proceedings, and to that extent I do not propose to dwell upon them or any of them at length nor do I propose to repeat the arguments which have been previously made. It would be our request and desire that there be deemed incorporated in this record the arguments made on behalf of the various motions, to which I will advert, by my partner Mr. Smith and particularly those arguments made during the David Victor hearing, which was the first of this series.

It would also be satisfactory were the arguments made in response by Mr. Mendonsa deemed to be incorporated in this record as well.

And I trust this is satisfactory, Mr. Mendonsa.

MR. MENDONSA: I would urge, however, that we also include in the record the arguments both pro and con to the motions in the Albert Ruddy and Herman Saunders cases.

MR. HOLTZMAN: And in the Crichton matter as well.

MR. MENDONSA: We would so desire.

MR. HOLTZMAN: This is our stipulation and agreement. With this thought in mind, I will state as succintly as I can the motions and objections and grounds therefor.

(Brief recess.)

MR. KNOPF: Back on the record, please.

At this time I will introduce Trial Committee exhibits. I have a copy of the charges and a cover letter sent by certified mail to respondent on April 9, 1973 with a signed return receipt attached. I would like these as Trial Committee Exhibit 1.

Is there any objection to the receipt in evidence of Trial Committee Exhibit No. 1?

MR. MENDONSA: No objection.

MR. HOLTZMAN: No objection.

MR. KNOPF: It will be received.

I have marked as Trial Committee Exhibit No. 2 a request for continuance of the committee hearing dated April 23, 1973, addressed to John Mendonsa and signed by David Miller of Loeb and Loeb.

I have marked as Trial Committee Exhibit No. 3 a one-page letter requesting a continuance of the hearing dated April 25, 1973, addressed to John Mendonsa and signed by David Miller of Loeb and Loeb.

I have also marked as Trial Committee Exhibit No. 4 a two-page letter granting a continuance to May 24, 1973, dated April 27, 1973, addressed to David G. Miller and signed by John Mendonsa, Resident Counsel, Writers Guild of America.

Is there any objection to receipt in evidence of Trial Committee Exhibits 2, 3, and 4?

MR. MENDONSA: No.

MR. HOLTZMAN: No objection.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: I will now direct my remarks to the charges in this matter and specifically the second and third pages of the document we have now marked as Trial Committee Exhibit No. 1. As I indicated, I will try to be as brief as possible consistent with the requirements of making a full and fair record on behalf of my client. I will simply state the motion or objection, as the case may be, and the grounds for the motions. I wish to emphasize to the committee, however, that by our proceeding in this summary fashion I do not mean to limit the force or the effectiveness of any of these motions or objections. We feel that they are well taken and in the case of Mr. Paris particularly well taken. And we feel that each motion or objection taken separately as well as the whole group taken cumulatively provide irrefutable grounds for the dismissal of this proceeding or, at the minimum, its continuance to a date beyond the term of the present strike. As yesterday, I will indicate with respect to each motion the number that was assigned to that particular ground or objection during the proceedings on Tuesday.

Motion No. 1 is to require the Guild and its Executive Director to present the charge against Mr. Paris in the form and substance required by the Constitution and By-Laws of the Guild and by federal law. The grounds of this motion are, first, that Article X-B, Section 1 of the Constitution and By-Laws and Section 5 thereof, taken together, require the preparation of a separate charge and notice of hearing that the charge referred to is necessarily

that document issued by a member or by the Board which sets forth the specific facts of the events.

Second, that the Labor-Management Reporting and Disclosure Act, and particularly Section 411A5, requires a presentation to the respondent of written charges.

The third ground of that motion is that in this proceeding Mr. Paris has been furnished only with the letter of transmittal and a notice of hearing which sets forth a summarization or recapitulation of the charge against him and not the charge itself.

Motion 1-A is a motion to dismiss the charge against Mr. Paris on the ground, each and all, that it is vague, uncertain and ambiguous. This motion is based upon Article X-B, Section 1 of the Constitution and By-Laws of the Guild, which provide in effect that the charge shall be succinct and explicit, and also Section 101 of the Labor-Management Reporting and Disclosure Act which, again, requires specificity in charges. As I state this I realize there may be some confusion in reference to the Labor-Management Reporting and Disclosure Act. The section to which I referred is codified as Section 411A5 in the codifications of the code of the act such as that I hold in my hand, but in the act of Congress as adopted it was Section 101. So the Section 101 and the reference to Section 411 are the same.

As I stated, the Motion 1-A is based upon the Constitution and By-Laws and upon the Labor-Management Reporting and Disclosure Act. In that regard, it is our position that the charge as summarized in the notice furnished

to Mr. Paris is vague, ambiguous and uncertain in that it relates to the offense of rendering services for Walt Disney Productions without any specification, statement, or indication whatsoever as to the nature of the services which are charged to have been improper.

The next ground of the motion, which will be Ground No. 2, requires the dismissal of the charges in that they are predicated upon strike rules adopted by the Guild and attempted to be made referable not only to current members but to so-called non-current associate members, Mr. Paris falling within the category of a non-current or associate member. It is our position that since he was not entitled to vote on the strike rules, the Guild has endeavored to make applicable to him rules regulating his conduct and his ability to perform services and earn a livelihood without permitting him to participate in the formulation of those rules or even to vote thereon. To this extent, it is our position that the charges violate the Labor-Management Reporting and Disclosure Act. They violate substantive and procedural due process of law. They deprive him of the equal protection of the laws, and for each and all of the foregoing grounds should be dismissed without proceeding further.

The Motion numbered 3 again relates to the charge and seeks clarification of a particular ambiguity therein. This motion is made upon the ground that the charges are ambiguous in that the term "rendering services" is nowhere defined. It would appear in the context in which these charges are rendered that the reference is to any services

of any kind or character. It appears further that in the printed record characterizing these charges filed by its counsel on behalf of the Guild in certain National Labor Relations Board proceedings numbered 31-CB-1203-2 and 31-CB-1223, which proceedings are presently pending. This Guild simultaneously took the position with respect to threats of this very discipline that these were, quote, "directed solely to disuade members from crossing picket lines to perform writing work as defined in the recently expired collective bargaining agreement with the association."

Our ground of motion, then, is that the ambiguity is created by the charges themselves, the work rules, and the simultaneously published record pertaining to the National Labor Relations Board meeting makes it impossible for Mr. Paris to know what the charge is against him and that deprived him of procedural due process of law.

Ground No. 4 moves to dismiss or postpone these proceedings for the reason that they are not proceeding in accordance with the Constitution and By-Laws of the Guild. In that regard, Article X-B, Section 6 provides specifically that the charges shall be presented to this committee by the Executive Director of the Guild. The appearances at the outset, matters apparent to the Committee members as we sit here in this room, make it clear that the executive director was not present and was not presenting the charge. Our motion is that the Guild must adhere to its own Constitution and By-Laws. The duties of the Executive Director in this regard may not be delegated, and this Committee is not

authorized to proceed absent compliance with these Constitutional prerequisites.

Ground No. 5, as I indicated yesterday, is critical and more than any other should be dispositive of this proceeding. The motion in that regard is to dismiss the proceeding on the ground that the Guild has no jurisdiction to impose discipline or to seek or threaten to impose discipline on any member, whatever his category of membership, when that member is acting in the capacity of an executive, a supervisor, or a management representative, as these terms are used and defined in the National Labor Relations Act. The ground of the motion is that it is a fact of common knowledge that Respondent Frank Paris bears the job title Executive Story Editor, that he is in fact the executive in charge of procuring and negotiating for the procurement of story materials for Walt Disney Productions, Inc., that he is involved in duties that are solely of executive, supervisorial, and management representation character, and that to the extent discipline is sought to be imposed upon him for the performance of services in any of these categories, it not only constitutes an unfair labor practice under federal law but also exceeds the power and jurisdiction of any labor organization, including specifically this Guild. In that regard, we advert, as we did yesterday, to the statutory language and authorities which were cited by Mr. Smith and myself. We advert also to the opinion of counsel for the Guild, special counsel for the Guild, contained in the statement which was published

and disseminated on behalf of the Guild. I believe that was under date of April 9. Yes, under date of April 9, 1973. And we request that the statement placed in the record at the first proceeding be deemed to be incorporated by reference as part of our argument in this proceedings.

MR. MENDONSA: Whichever proceeding it was introduced in first. I don't know that it was introduced in the first proceeding.

MR. HOLTZMAN: It was the first proceeding.

MR. MENDONSA: All right. Fine.

MR. HOLTZMAN: That is what happened to our last copy.

MR. MENDONSA: The reason I said that is that I wasn't sure it was the first day. In any event, it was, I presume, the first proceeding that Loeb and Loeb represented a client.

MR. HOLTZMAN: I advert specifically to the hearing against David Victor, Guild member, April 9, 1973, bearing at the top the large word "Attention" and setting forth, among other things, the statement of Charles Hackler, special labor counsel to the Guild, and request that that particular document be deemed incorporated by reference into our argument on that point.

MR. MENDONSA: No objection to that.

MR. HOLTZMAN: Next, and by way of enumeration we are now at Item No. 6 in this series of motions and objections, we move to dismiss the proceeding or, in the alternative, to continue it until the National Labor Relations Board has decided the issues now pending in trial before it relating

to the proceedings against executive, supervisorial, or management personnel with respect to matters such as these.

Item No. 7 --

MR. KNOPF: I want to go off the record for a moment.

(Discussion held off the record.)

MR. HOLTZMAN: Back on the record again.

We next move to dismiss the proceedings -- This is Item No. 7 -- on the ground that the Writers Guild of America, West, Inc., has no jurisdiction to discipline, to threaten to discipline, or attempt to discipline persons acting in occupations or fields of endeavor outside of the scope of the Guild representation. The grounds manifestly are simple. First, the Guild is the exclusive certified bargaining agent for writers. Second, as a fact of common knowledge, Mr. Paris was at the times and places referred to in the charges working in a capacity other than that of a writer. Third, that neither this nor any other labor organization has the authority or jurisdiction to discipline or to threaten to discipline or to attempt to discipline any person for the performance of services outside of the subject matter jurisdiction with respect to which the organization has been certified.

The eighth item on the list of motions -- And, again, as I stated yesterday, I do not mean to impugn the integrity or honesty or independence of the Committee by stating this ground of motion -- we move to dismiss the matter on the ground that the Committee as constituted, comprising four former presidents of this Guild or its

predecessor organization and the former president of a subdivision of the Guild, is in effect an elite board and cannot fairly sit as a tribunal, because, first, its members are too closely identified with the management and leadership of the Guild; second, the individuals are consciously or subconsciously too emotionally involved in the outcome of the pending strike and are conscious of the relationship of this proceeding to the strike; third, that a decision in favor of Mr. Paris in this proceeding would of necessity be prejudicial to the positions and interest of the Guild in the strike; and, fourth, as a conclusion, that this tribunal cannot, without defeating its own interest, rule other than against the respondent in this matter. This ground of motion is based specifically on Article X-B, Section 4 of the Constitution and By-Laws which require this Committee to be constituted of members none of whom is interested in the proceedings other than as a Guild member, our position being that someone in executive or former executive capacity has interest far more pervasive than that of an ordinary member and, second, on the ground that the Labor-Management Reporting and Disclosure Act requires an independent and disinterested tribunal. Again, I state I don't mean to impugn anybody by this. I am talking about the subconscious interest or bias which necessarily results from a lifetime involvement in the Guild and a deep and completely justified concern for the present situation.

As Ground No. 9, we again move to dismiss the panel on the ground that any panel comprised of members of

the Writers Guild of America at this time and under the present circumstances -- and I refer particularly to the pendency of the strike -- that no men under the circumstances can act impartially, that only a totally disinterested person could sit at this time and under these circumstances. Our motion at this time is, in the alternative, either to dismiss this proceeding or to continue it to sometime beyond the pendency of the strike when the present pressures no longer exist.

Ground No. 10 in our customary enumeration is not available in the case of Mr. Paris and is not asserted on his behalf.

Ground No. 11, again we seek to dismiss the proceeding on the ground that the existence of immense quantities of publicity concerning this strike, concerning the issues therein, and concerning the relationship of this respondent to the strike have rendered the atmosphere so highly charged with emotion as to prevent any fair and unbiased adjudication at this time. We move to dismiss the matter on this ground or, in the alternative, to continue it to a date sufficiently beyond the term of the strike so as to obviate the existence of this type of pressure. Proceeding at this time and under these circumstances, we submit, violates not only the Labor-Management Reporting and Disclosure Act but also fundamental considerations of procedural due process of law.

The final ground, and this is Item No. 12, relates specifically to the first charge against Mr. Paris

wherein he is accused of having -- I am sorry -- the second charge against Mr. Paris wherein he is accused of having refused on or about February 20, 1973, to accept an assignment to picket. We move to dismiss that charge, first, on the ground that Mr. Paris had no obligation to accept any such assignment prior to the commencement of the strike or the commencement of picketing and, second, that in any event it is a subtle proposition of labor law that a refusal to accept an assignment to picket cannot be made the basis for union disciplinary action. To the extent that this charge is based upon Rule 28 of the Rules for the Conduct of Members During a Strike, it is our position that the rule is contrary o public policy, contrary to the labor law of the United States, illegal and void, and we therefore move to dismiss this portion of the charge for the reasons stated. This is a ground not previously adverted to, to my knowledge, in any proceeding, and should the tribunal or any member desire National Labor Relations Board authorities on this subject, I would be pleased to supply them. I have not brought those authorities with me today to cite for the record, but I am prepared to provide authorities by letter to supplement the matter.

These are the grounds for each and all of the motions I have stated. Separately and cumulatively, we submit that the proceedings should be dismissed or, in the alternative, and at a minimum, continued to a date beyond the pendency of the now-existing strike.

MR. KNOPF: Mr. Holtzman, Motion No. 12 would appear

to be a departure from other motions.

MR. HOLTZMAN: Yes, it is. It is a ground not previously adverted to, and I believe it is available for the first time.

MR. MENDONSA: I will not belabor the record by making arguments with respect to all the motions. I will stand on the arguments in opposition to the motions that were made in the prior hearings and the records that have been incorporated in this case.

I wish only to point out that, with respect to Motion No. 2 in Mr. Holtzman's argument that Mr. Paris did not have the right to vote for a strike, that there is no evidence before this Trial Committee that he did not have the right to vote for a strike inasmuch as the current Constitution and By-Laws of the Writers Guild of America, West, provides that a member who has a legal commitment to write or sell literary material to a company against -- with the company -- let me read it. I am sorry.

"The evidence rules show that Mr. Paris is a non-current member, and non-current members have the following right: A non-current member has the --

MR. HOLTZMAN: Give me the page, please.

MR. MENDONSA: This is on pages 9 and 10, Article IV, Section 7, Subsection D. And I am reading from the middle of the first paragraph on 10.

"A non-current member will also have the right to vote on restraining orders

but only when the member has a legal commitment to render writing services or to sell or license literary material to a company which is a signatory to a collective bargaining agreement with the Guild and only if such commitment would be directly affected as a result of the issuance of a restraining order."

I submit that there is no evidence presented before the Trial Committee at this time that he did not have a legal commitment to render writing services in conjunction with the section I have just read.

MR. HOLTZMAN: Our response to that, Mr. Chairman, would be this. It is my understanding that Mr. Paris is well known in this industry and that his position and duties in that position are well known in the industry and are particularly well known to the members of this Guild with whom he deals in the performance of his duties. He is not employed in a writing capacity, and, very frankly, I thought this was a fact of common knowledge. If it is Mr. Mendonsa's position that the exception in Subdivision 7 applies, that is that the member, that Mr. Paris has, quote, "a legal commitment to render writing service or to sell or license literary material to a company which is a signatory," et cetera, et cetera, if this is the Guild's position in this matter, I would respectfully suggest, then, that the burden of proof is on Mr. Mendonsa as part of his case to demonstrate that Mr. Paris has such a commitment, had such a commitment at the

time of the vote and was thereby tendered the opportunity to vote both on the strike and upon the Rules for the Conduct of Members During a Strike. It is not our position to have to refute these matters. It is the Guild's obligation to make out every element of the case, including this particular element.

MR. MENDONSA: May I point out that the Guild does not take the position that it only has a right to discipline members who would in fact have a right to vote at strike on it. This is the defense that is raised in the form of a motion by respondent's counsel, and I was just responding to it that there is in fact no proof to that effect.

With respect to the new motion, Motion No. 12, that the charge that he has refused to picket on or about February 27 be dismissed, I may say that I know of no labor law --

MR. KNOPF: What was the date?

MR. MENDONSA: I believe 27.

MR. HOLTZMAN: 22nd.

MR. MENDONSA: That was perhaps a slip on my part. I will make a motion, by the way, to amend the charge to February 27. This is a typographical error.

MR. HOLTZMAN: Mr. Chairman, that motion is resisted on the ground it is a major departure from the charge originally charged. Manifestly, he has had the opportunity to defend with respect to matters occuring on the 22nd. We have not had the opportunity even to consult with him with respect to matters which occurred on other or different

dates. The fact that the charge is predicated upon a conversation two days after the date of the Rules for the Conduct of Members During a strike is very significant and was a matter of concern with us. And if the motion is made to extend it five days beyond this time, it becomes a whole and newly different charge. He is entitled to 15 days to defend such a charge as profided in the Constitution and By-Laws, and since we are here at the hearing at this time, it is simply too late. These charges have been pending since April 9, 1973. They have been the subject of considerable correspondence between counsel as reflected by the record. And there has been more than adequate opportunity to amend and to give adequate notice of amendment should counsel have desired to do this.

MR. MENDONSA: May I point out that the charge is broadly stated, that the refusal was made on or about February 22, 1973. "On or about" certainly would encompass a period within five days on either side of February 22. Since the strike orders only went into effect on February 20, we are talking probably in a week's period of time. I am sure these would be encompassed in the on-or-about provision. I am sure that counsel for respondent would have questioned his client within any period of time since the commencement of the strike and the periods of time the strike orders were sent, the strike rules were sent to the member whether or not he did at any time refuse to picket. I do not believe that the respondent has been denied due process of law or would be denied due process of law by proceeding on this charge and

allowing the amendment to clarify at this time.

MR. HOLTZMAN: I respectfully submit to the Committee that the laws are clear that charges in a matter such as this are required to be strictly construed. That the use of the equivocal "on or about" should not be permitted to enable counsel to present evidence bearing on perhaps a wholly new and different offense five days later, which is a long time afterwards in the context in which we are presently dealing. The language of the charge is to be narrowly construed, and a deviation as major as this should not be permitted under the language as promulgated, or amended.

MR. KNOPF: The specific dates that are being challenged here, is it that the strike rules were incorrectly dated?

MR. MENDONSA: No. The last sentence on the first page of the charge, which is Trial Committee Exhibit 1, states:

> "You are further charged with having refused on or about February 22, 1973, to accept an assignment to picket."

My motion is to amend the date from February 22 to "on or about February 27."

MR. BLANKFORT: Mr. Holtzman, are you intending sometime in the course of this hearing to argue the specific charge on that specific date?

MR. HOLTZMAN: I thought that was the only thing we are trying.

MR. BLANKFORT: I just want to make sure I follow your drift.

MR. HOLTZMAN: I propose to hold Mr. Mendonsa to his proof. It is his obligation to prove that charge as made. This is the whole idea of the hearing.

MR. BLANKFORT: What is your understanding of the phrase "on or about"?

MR. HOLTZMAN: Very frankly, sir, in the context of the rule of strict construction, I ignore the language. Although this is commonly used in proceedings of this character, it is my understanding that a situation such as this where we are dealing with what is essentially a penal situation --

MR. LAVERY: Did you say "penal"?

MR. HOLTZMAN: Certainly.

MR. LAVERY: I took the semantic of "penal" as criminal. I forgot that it also refers to "penalty."

MR. HOLTZMAN: We are talking about a fine forfeiture or assessment against him, and that is penal as far as I am concerned.

It would be our position that that language is to be disregarded in view of the statutory view of strict construction.

MR. KNOPF: Trial Commitee Exhibit 2 is a letter to Mr. Mendonsa from David Miller of your firm citing certain objections to the trial. Nowhere is there listed an objection to the wording "on or about" in the initial charges.

MR. HOLTZMAN: Mr. Chairman, that is absolutely correct, but you will notice also Mr. Miller, by the same letter, requested a list of witness and exhibits which would have

given us a better opportunity to prepare and made us more aware of the specifics of the charges against us, and that by Mr. Mendonsa's letter of April 27, 1973, Trial Committee Exhibit No. 4, the request for the names of witness was specifically declined. There has never been any response to the request for exhibits, but I represent to the tribunal we have never received any. In other words, all we knew going in about what the Guild intended to prove was the language in the charge of Trial Committee Exhibit 1.

MR. KNOPF: I think that what you are doing is nominating a new motion, No. 13, to dismiss; is that right?

MR. HOLTZMAN: No, sir. I am resisting Mr. Mendonsa's motion to amend the charges at this very late time.

MR. MENDONSA: Let me point out that the phrase "on or about" is commonly used in civil cases, criminal cases, cases of labor law including allegations of unfair labor practices, that there has never been any necessity for having to prove the exact date upon which the charge has been alleged to have occurred when there is a phrase "on or about." Now, I suggest that five days is certainly on or about the date that has been alleged. The question really is has the respondent been denied due process by the lack of time, of reasonable time to prepare his case. I submit to you that the charges which were mailed to the respondent April 9 has given him sufficient time to explore with his counsel what that phrase "on or about" means. It is specific. It says that he refused to accept a picket assignment. I would suspect that if counsel explored with

him at any time on or about February 22 he refused to accept the picket assignment, I do not believe he has been denied due process.

MR. HOLTZMAN: There are two matters before us at the moment. First, Mr. Mendonsa's motion to amend the charges during the pendency of this hearing. We resist this motion on each and all of the grounds stated. If the motion is granted, it would be our position that at the minimum we would then become entitled to 15 days of notice of amendment and an opportunity to prepare for it.

MR. KNOPF: Point of order. There is an antecedent motion on the table before that one.

MR. HOLTZMAN: There have been 12 motions. This is No. 13.

MR. KNOPF: I just meant as a matter of priority there are other motions prior to this one.

MR. HOLTZMAN: I happen to think you are right. I trust that the Committee is going to receive all of the motions and retire to determine how they should be ruled upon. I am addressing myself simply to Mr. Mendonsa's proposal to amend, and I have indicated my opposition to it. I will state further, so there is no question about our position, that in the event the motion to amend is denied and we then proceed on the taking of evidence on the charges as presently framed, trying to use the magic words "on or about" to permit the introduction of evidence pertaining to the 27th on a charge alleging conduct on the 22nd, it would then be our position that the evidence should not be

admissible, that it would constitute an impermissible variance from the charge as framed. With regard to Mr. Mendonsa's specific statement that this is commonly used legal language, it certainly is. But in the criminal context where it is used, the accused has the benefit of a Grand Jury transcript and certain discovery rights that would permit him to find out what the evidence against him is going to be. In a civil context, he has certain evidenciary rights, and surprise is lacking. We have none of these, and it would certainly come to us as a surprise that a material variance such as this is sought to be swept under the loose "on or about."

MR. MENDONSA: In an administrative hearing such as this one before the National Labor Relations Board, the term "on or about" is permitted, and there are no --

MR. HOLTZMAN: After dates are furnished?

MR. BLANKFORT: I share concern with Mr. Holtzman. And I would like confirmation. It occurs to me that some of the earlier charges also included the "on or about." Is that true? Earlier cases that we have considered here. Have there not been earlier charges phrased "on or about" a date?

MR. HOLTZMAN: I believe, sir, that this matter came up for the first time in my presence on the David Victor matter. In this case the charge referred, among other things, to crossing a picket line during the month of April, but the charge was mailed out on April 14. And evidence was sought to be introduced pertaining to conduct on April 16, two days after the charges. And we objected, and our objection in

that regard was sustained. I think this is the first time the question has come up as to the meaning of the term. In the cases up until now, for example the case yesterday, the charge said "on or about April 6," and the evidence pertained to April 6.

MR. POE: March 6.

MR. HOLTZMAN: March 6.

MR. BLANKFORT: The case on or about March 6, you were taking that to mean March 6, and the phrase "on or about" was simply a filler? That is what puzzles me. I want you to know, as I have said before that I am impressed with your point. But you mean if it had been March 7 you would have raised the same issue?

MR. HOLTZMAN: Probably.

MR. POE: It wasn't March 7th.

MR. HOLTZMAN: Here it becomes very material.

MR. MENDONSA: The phrase "on or about" is a phrase to put the respondent or his counsel or the defendant on notice that that might not be the precise date of the occurrence, of the events. That he should therefore explore that possibility that the event occurred on another date which would be on or about. And "on or about" should be construed within reasonably on or about. And I submit that five days is within a reasonable time on or about February 22. And certainly counsel and respondent should have been aware that that possibility existed and should have explored that there may have been a refusal within a five-day period on either side of February 22. And he has not been denied

due process.

MR. KNOPF: Is it possible that both you gentlemen have made your point here? Do you want to add anything?

MR. HOLTZMAN: I don't think it would materially move the matter ahead. I think I will stand on what I have said.

MR. MENDONSA: When this motion came up, I was making an argument in opposition to respondent's 12th motion, and in the middle of that I made this motion.

MR. KNOPF: Do you want to return to the 12th motion?

MR. MENDONSA: Yes. I want to point out one more statement on the 12th motion made by respondent. I do not know of any principle of labor law that would prevent a labor union from disciplining its membership for refusal to perform picket duty. In any event, this is not a proper forum for this decision. The proper forum for this decision would be within the exclusive jurisdiction of the National Labor Relations Board.

MR. MONASTER: I have no legal opinion about "on or about" other than it occurs with great regularity both at these hearings and all the trials I have seen in motion pictures. I would think it would have great significance. If I were to say I was married on or about June 4 --

MR. HOLTZMAN: If you forgot the date, your wife would get you.

MR. MONASTER: -- or Pearl Harbor was bombed on or about December 7 -- And I don't mean to anticipate your defense or even suggest one, because your competency has been proven. Is there any element in either of these dates,

February 22 or February 27, which would be ground for objection based on the ground that it was refusal to picket before the strike began?

MR. HOLTZMAN: Both dates occurred before the strike began.

MR. MONASTER: If this would at the moment the 27th, would you have an objection, a legal objection based on the fact that it occurred before the strike began? What I am trying to determine, is there an element, or are we still in the "on or about" area exclusively.

MR. HOLTZMAN: No. The point I am trying to make is this. Number one, our position is simply defensive. Mr. Mendonsa is presenting the charge, and our position is that he has to prove precisely those charges which are made, including the dates and places and the whole bit.

MR. MONASTER: Then that is the evidence.

MR. HOLTZMAN: And he is not permitted to have variance. He has to prove the charges. We don't have to anticipate his charges. Secondly, I would point out the somewhat precipitous situation that would occur if a determination was made on the Rules for the Conduct of Members During a Strike on February 20 respecting an associate or non-current member not even permitted to vote in this, and he is being charged with a refusal on the 22nd. In the state of affairs and particularly in the state of the United States Mail, I think we could argue that he would not be able to become aware of the rules.

MR. LAVERY: Mr. Chairman, without meaning to cut this

short, I think we have in an informal way exhausted the arguments on both sides. And unless we proceed to executive session, this is simply holding an executive session in public.

MR. KNOPF: It has been our custom to recess to rule on motions after they have been submitted. We have considered Motions 1 through 11 in executive session in matters relating to others. Our response to these are the same. We deny them.

As to Motion 12, the Committee has not considered this. We will recess to discuss this. We will also discuss the motion to amend.

(Recess.)

MR. KNOPF: May we proceed.

Mr. Lavery will respond.

MR. LAVERY: Speaking for the members of the Committee, with respect to Motion No. 12, the motion is denied.

With respect to the last motion by counsel for the respondent in the matter of -- rather, it's Mr. Mendonsa's motion to amend the complaint, this Committee feels that in proceedings like this we are definitely a fact-finding committee. We are trying to get to the heart of the matter in each proceeding as fairly and clearly and as expeditiously as possible. This is not a court of law. It is not a juridical proceeding, and we are anxious not to get lost in the myriad technicalities. We feel that with respect to the motion to amend, it should be granted because we see no material variance with respect to the dates.

MR. HOLTZMAN: This motion having been granted, then, Mr. Chairman, we formally move that this matter be continued for not less than 15 days.

MR. LAVERY: I am sorry. We granted the motion to move forward here in this proceedings.

MR. HOLTZMAN: I would like to make a motion to continue the proceedings.

MR. LAVLRY: You are asking for a new motion?

MR. HOLTZMAN: Yes.

MR. KNOPF: Motion is denied.

Anything further before opening statements are called for?

(No response.)

MR. KNOPF: Mr. Mendonsa, do you wish to make opening statement?

MR. MENDONSA: Very briefly. We will show that on or about February 27, 1973, the respondent did refuse to accept the picket assignment and on or about March 6, 1973, did cross a picket line established at Walt Disney Studios and did go in to perform services for the studios.

MR. KNOPF: Mr. Holtzman.

MR. HOLTZMAN: We will defer any opening argument until the completion of Mr. Mendonsa's case.

MR. KNOPF: Mr. Mendonsa, will you state your case.

MR. MENDONSA: We will call our first witness Mr. Carey Wilber.

CAREY WILBER

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Will you please state and spell your name?

A. Carey, C-a-r-e-y, Wilber, W-i-l-b-e-r.

Q. Mr. Wilber, you are a member of the Writers Guild of America, West, Inc.; is that correct?

A. Correct.

Q. And approximately how long have you been a member of the Guild?

A. About 20 years.

Q. And I believe you testified in a prior case you are co-chairman of the Strike Services Committee.

A. That is correct.

Q. And approximately how long have you held that position?

A. October, I believe.

Q. October of 1972?

A. Right.

Q. And will you give us a brief description of your duties as they were in the month of February -- make it more specific than that -- a description of your duties as they were on or about February 27, 1973.

A. Organizing picket lines for the studios in the event a strike was called.

Q. And how did your committee or you go about that?

A. We have a telephone committee which called members of the Guild to give them picket assignments.

Q. And did you make such calls?

A. No. Under our setup, th members of the telephone committee members, gave them picket assignments. If there was any problem, any refusal to picket, these people were handed over to Miss Kay Leonard and myself to follow up on call-backs.

Q. Now, directing your attention to February 27, 1973, did you on that date have a telephone conversation with a Frank Paris?

A. I did.

Q. And did you call him or did he call you?

A. One of our telephone committee called him, there was a conflict, and I talked with him.

Q. I see. And did he identify himself as Frank Paris?

A. Yes.

Q. And did you identify yourself?

A. Yes.

Q. Will you tell us what was said in that telephone conversation. What did you say to him and what did he say to you?

A. First off, it was a case where he had refused to picket. I told him that he had an obligation as a member of the Guild to perform picket duties. He said that he would be unable to perform such duties, because he was going in to work in an executive capacity at Disney Studios. I

read him the strike rules and regulations covering these matters, specifically the obligation to picket, the penalties involved for refusal to picket, for failure to picket, and also the position of the Guild on people who crossed our picket lines in the event of a strike. Mr. Paris told me that he felt he was in an executive capacity, that he was not involved with writing, that he had a contract with Disney Studios which he felt morally obligated to fulfill. I urged him at that time to consult with the Guild council before making an irrevocable decision, and he advised me that he had ample counsel from other sources. That was about the gist of the conversation.

Q. You said you read to him the rules. May we at this time agree to incorporate into this record the Rules for the Conduct of Members During a Strike dated February 20, 1973, and the Constitution and By-Laws and the strike order that was dated March 5, as we have in prior cases?

MR. HOLTZMAN: That will be satisfactory.

MR. KNOPF: They are received.

Q. BY MR. MENDONSA: Let me show you the Rules for the Conduct of Members During a Strike dated February 20, 1973. Will you tell me what specific rules you read to Mr. Paris?

A. (Reading) "Rule 28: The Guild shall have authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any

member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

"All members are prohibited --"

Article 12.

"All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer."

MR. MENDONSA: I have no further questions.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Yes.

EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Carey --

MR. KNOPF: It's "Wilber."

THE WITNESS: Everybody makes that mistake.

Q. BY MR. HOLTZMAN: Mr. Wilber, do you still have before you the Rules for the Conduct of Members During a Strike?

A. No.

MR. MENDONSA: He does now.

Q. BY MR. HOLTZMAN: Will you take a look at Rule 30 as set forth therein.

A. Yes.

Q. Would you read it.

A. (Reading) "Article 30: No member shall work with any individual, including a writer-executive, who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the council to have violated strike rules, in the event no disciplinary action was instituted against such person."

Q. Now, referring to this telephone conversation that you had with Mr. Paris on the occasion you described, you read that rule to him also at that time, did you not?

A. No, I did not read that rule to him. I had a discussion with Mr. Paris about that, which I quite fervently urged him not to take this step. And I mentioned this rule, but I did not read the rule as mentioned here.

Q. You told him in substance that he would be penalized to such an extent that no writer would work for him at Disney if he was disciplined by the Guild?

A. I remember my exact words to him -- searching my recollection now, I said, "Frank, the rules are horrendous, and I urge you not to take this step."

Q. Specifically, you told them that no writer would work for him if he was disciplined?

A. I told him, yes.

MR. HOLTZMAN: I have no further question, Mr. Chairman.

MR. KNOPF: I have a question or two.

One of the charges against Mr. Paris is his

apparent refusal to picket. Was he assigned to a specific case of picketing, a time and date?

THE WITNESS: No. As I recall, he was not. The first caller may have assigned him, but he refused to accept the assignment. And then he came on to me, and I did not discuss any definite assignment with him.

MR. KNOPF: Do you know what the nature of that first call was, by any chance? Who made the first contact with him?

THE WITNESS: I believe it was Shelley Wile.

MR. KNOPF: Do you have any records in strike headquarters of what the specific assignment was, what the duration was, how long he was asked to picket?

THE WITNESS: He would have been -- well, I can tell you briefly what he would have been assigned to. He would have been assigned to a studio other than Disney. He would have been assigned to a shift of three hours a day for one -- for four days, and then he would have been off for ten days. And we had them divided into red and blue shifts at this time. He would have been on red shift, which is the first week shift. He would have been on for four days, three hours a day, with a floating shift. In other words, he would have gone on from 6:00 to 9:00 the first day, 9:00 to 12:00 the second day, 12:00 to 3:00 the third day, and 3:00 to 6:00 the fourth day.

MR. KNOPF: Was he told that this would be for the duration of the strike or until otherwise informed?

THE WITNESS: I can't say -- I did not tell him that,

but I imagine the telephoner did.

MR. KNOPF: Is there any record in strike headquarters of specifically what he was told?

THE WITNESS: I don't believe so. The only time a record was taken was when there was a conflict, and then it was passed on to either Kay Leonard or myself.

MR. KNOPF: I think it is very important. Is strike headquarters open now, the building?

THE WITNESS: Yes.

MR. KNOPF: I think it is important that we get all the information possible as to what he was assigned to, where he was assigned, if he was told that he would be on a specific shift which would picket at such and such a time this week or next week at such and such a time. Is there any way of getting that information?

THE WITNESS: I don't think we have the exact records for that time.

MR. POE: Do you have a blue card?

THE WITNESS: We have the blue card, but we were not keeping the assignments at that time. We were keeping handwritten logs.

MR. POE: Would that be similar to the case in Benedict?

THE WITNESS: I don't know.

MR. POE: You know which card?

THE WITNESS: I know the card system, but I don't know if we were using the card system to indicate the assignment. This was in the week before the strike, and we didn't keep

as careful records as we did later on.

MR. MONASTER: Carey, the card files which we have at strike headquarters which includes a card for any member of the Guild, that would probably have some indication.

THE WITNESS: Might have, yes.

MR. KNOPF: Could we possibly get it?

THE WITNESS: Yes.

MR. KNOPF: One other question. Do you know if any other effort was made to have him picket after your conversation with him?

THE WITNESS: No, I don't know. There may have been subsequent efforts, but I don't know of them.

MR. KNOPF: Can you do one thing? I think the committee is very interested. Can you find out whatever information you have over there in regard to your contacts with Frank Paris in regard to picket duty and what his statements were, when he was told to picket, for what duration he was told to picket? I think it is of vital interest to us.

THE WITNESS: All right. But I don't know if those records are still available.

MR. KNOPF: That would be of value, too.

THE WITNESS: I will check if it is.

MR. KNOPF: Does anybody have any questions?

(No response.)

MR. KNOPF: With your permission, can we excuse the witness, maybe not right away?

MR. MENDONSA: Why don't we excuse the witness and call

my next witness.

MR. KNOPF: Would that be all right, Mr. Holtzman?

MR. HOLTZMAN: That would be fine with me.

MR. KNOPF: Will you see if you can get those for us?

THE WITNESS: I will run over right now.

MR. MENDONSA: We will call as our next witness Phyllis White.

PHYLLIS WHITE,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Miss White, please state and spell your name.

A. Phyllis, P-h-y-l-l-i-s, White, W-h-i-t-e.

Q. And are you a member of the Writers Guild of America, West?

A. I am.

Q. And approximately how long have you been a member of the Guild?

A. About 23 years.

Q. Miss White, you are aware, of course, that there was a strike or there is a strike and has been since March 6 of 1973 by the Guild against various motion picture and television production companies in this country, are you not?

A. Painfully well.

Q. Did you serve as a picket captain during that

strike?

A. Yes.

Q. And are you currently serving as such?

A. Yes.

Q. And where do you serve?

A. At Disney and at NBC.

Q. Are you serving both locations now?

A. Yes, sir.

Q. And how long have you served at Disney?

A. Since March 6th at 6:00 A.M.

Q. Now, will you please give us a brief description of your duties as a picket captain at Walt Disney Studios?

A. Well, I see that the pickets are there and covering each gate and make a record of their presence.

Q. And do you, yourself, visit the studios and picket?

A. Yes.

Q. Now, directing your attention to March 6 of 1973, did you on that occasion picket Walt Disney Studios?

A. Yes.

Q. And was there a particular location at the studio which you were picketing?

A. I was at the main gate.

Q. And approximately what time were you there on that date?

A. I think about 8:30 until 9:30.

Q. On that date did you have occasion to observe Mr. Frank Paris?

A. I did, and I didn't know who it was. A man came through and smiled and waved at one of the pickets. Because it was such a dreary morning, I made a comment about all the smiling. And she said, "Oh, that's Frank Paris. He works there as story editor."

Q. Who was that person?

A. Sue Milburn.

Q. Was she picketing?

A. Yes.

Q. Was she a member of the Guild?

A. Yes.

Q. Do you know where she was employed?

A. I don't know. I believe she used to work at Disney.

Q. Was anybody else present besides yourself and Miss Milburn?

A. Robert White.

Q. Is Robert White your husband?

A. Yes.

Q. Is he also a member of the Guild?

A. Right.

Q. And he was also picketing at that time.

MR. MENDONSA: I have nothing further.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: I have no questions.

MR. KNOPF: Committee?

(Committee members shake their heads.)

MR. KNOPF: Thank you, Mrs. White, very much. Generally

we ask witnesses to excuse themselves after they have testified, but under the circumstances we are not going to ask you to leave without your husband.

MR. MENDONSA: At this time I would make an offer of proof that were I to call Mr. White he would testify to substantially the -- give the same testimony that Mrs. White has given. If we may stipulate to that.

MR. HOLTZMAN: Including the testimony that the witness cannot identify Mr. Paris?

MR. MENDONSA: That is correct.

MR. HOLTZMAN: Or Sue Milburn?

MR. MENDONSA: That is correct.

MR. HOLTZMAN: That is fine.

MR. KNOPF: Thank you very much.

MR. MENDONSA: May I ask for a recess until Mr. Wilber comes back?

(Recess.)

MR. KNOPF: We will return to session.

MR. MENDONSA: Will you recall the witness Mr. Wilber? I believe that you were asking the questions. Did you want to proceed?

MR. KNOPF: I am curious to know what information you might have regarding the specific nature of the assignment.

THE WITNESS: I tried to check back on our original assignment logs, but they are destroyed. I have here the membership card: Frank Paris, care of Walt Disney Studios, 500 Buena Vista, Burbank 91503. It carries two phone numbers: 845-3141, extension 1047, and home 892-6948. And

on it apparently [illegible] assignment made to Burbank Shift B with the name [illegible] Menzies who was picket captain.

MR. KNOPF: Could you elaborate what that would mean the assignment would be?

THE WITNESS: It would mean that Mr. Paris was assigned to Burbank Studio picket duty in Shift B, which meant that his first day of picket duty would be the first day of the strike, and as I recall the strike began Tuesday morning. That would mean he would be on the 6:00 to 9:00 shift at Burbank Studios.

MR. KNOPF: How many days a week?

THE WITNESS: He would be on four days a week.

MR. KNOPF: Four days a week?

THE WITNESS: Yes, sir.

MR. KNOPF: Was that assignment to Shift B, was that ongoing, or when was that terminated?

THE WITNESS: We terminated this system about -- after about six weeks, I believe, and changed our shifts to red, white, and blue shifts. Each person would then have two weeks off but would work five days every week that he was assigned to picket duty, and he would have a fixed shift time.

MR. KNOPF: In the first six weeks, how many weeks would a man assigned to that shift be picketing?

THE WITNESS: He would be picketing three weeks or twelve days.

MR. KNOPF: Twelve days?

THE WITNESS: Yes.

MR. KNOPF: Thereafter?

THE WITNESS: Thereafter he would be on -- he would

have been reassigned, and he would have been picketing one out of every three weeks for five days.

MR. KNOPF: Clearly, he was reassigned --

THE WITNESS: No.

MR. KNOPF: -- was he?

Were all members automatically reassigned, or was it just a matter of course?

THE WITNESS: No. We had to reassign the whole picket staff.

MR. KNOPF: There was no reassignment after the first six weeks?

THE WITNESS: No, certainly.

MR. KNOPF: And you stated he would have served a minimum of 12 days during that first six weeks had he answered the call, so to speak?

THE WITNESS: Yes.

EXAMINATION

BY MR. HOLTZMAN:

Q. Just a couple questions, Mr. Wilber, just to make sure I understand clearly what you have been telling us.

You have told us about one single telephone conversation with Frank Paris?

A. Yes.

Q. And I take it that that is the only conversation that you had with him concerning the subject matter of his picket duty; is that correct?

A. Yes.

Q. And you have told us the entire substance of that conversation?

A. As best as I can recall.

Q. And specifically, just so there is no question about it, you did not in that telephone conversation tell Mr. Paris that he was assigned to Burbank Shift B?

A. The previous caller, I assume, had.

Q. Let me get an answer to my question on the record.

A. No, I did not.

Q. You did not during that conversation tell him of his assignment; is that correct?

A. I don't recall that, no.

Q. That is your recollection is you did not tell him that?

A. I am not sure whether I did nor not. Frankly, at the time I was shocked by his attitude and rather dismayed.

Q. But you did not tell him -- You cannot at this time recall telling him about Burbank Shift B?

A. I can't be sure whether I did or not.

Q. Now, someone else had called him previous to your telephone conversation --

A. Yes.

Q. -- is that correct?

A. Yes.

Q. And do you recall that that was Mr. Sheldon Wile?

A. As closely as I can recall.

Q. And Mr. Wile was the one to have made a call to him on February 27 concerning matters relating to picket assignments?

A. I assume it was Mr. Wile. I can't remember.

Q. It was some person on your telephone staff?

A. It was some person on the telephone staff, yes.

Q. And this person reported to you that Mr. Paris required a further call because he was refusing an assignment?

A. Right.

Q. Were you present in the room when this previous telephone call was placed to Mr. Paris?

A. I don't believe so.

Q. I take it then that you did not hear either side of that particular conversation.

A. No.

Q. When Mr. Wile or whoever it was reported to you that Mr. Paris required a further contact, was that report verbal or in writing?

A. I will have to explain that in terms of how we were set up on this thing.

Q. Please do.

A. Each telephone caller was given a log with a list of names to call. We used a code A for accepted, I believe it was, C for conflict. When they had called the members on this form -- on this log, they made no indications of whether they had accepted the picket assignment, asked for an excuse, or had refused to picket. These sheets were then turned over to either myself or Miss Leonard, and we

called them back. On occasion -- On occasion when a phoner was having serious problems with a member, cases where a member grew abusive, used foul language, something like that, then either Miss Leonard or myself -- usually myself in such cases -- then took the call from them at that time, at the initial contact.

Q. Can you remember as you sit here now which of these applied to Mr. Paris?

A. Oh, Mr. Paris was not abusive. We had a very friendly conversation.

Q. As a matter of fact, wasn't it a situation where the letter C was put on the log and then you called him back?

A. I am not sure exactly how it transpired, whether I called him back or took the call. Somebody may have called me and said "We have another problem here. Will you talk to him?" There were so many of these calls that I can't remember this specific one.

Q. Can you remember specifically anything further about how the Paris matter was brought to your attention?

A. No. It was -- it was what I consider such a common occurrence, I mean the fact that we did have these conflicts, that I didn't make any particular note of it except that I did file a note that he had refused to picket.

Q. You told us a few moments ago that the notation on that card that you have in front of you indicates that a specific assignment was allocated to Mr. Paris, that is to say, a record has been made that this was the shift that he'd be on?

A. I will explain this further.

Q. Please do.

A. As these cards were taken from the card file, a note was made of the assignment to be made to the particular member and the name of his particular picket captain, and this was noted on the card. Now, whether or not he accepted the assignment, this was his assignment, this was the assignment that we were prepared to give him.

Q. And this notation was made on the card before any telephone call was placed to him?

A. Prior to the calls, yes.

Q. And, therefore, the existence of the notation on the card does not mean that he was either told or was not told of what his assignment was?

A. No, I would say that on the initial call he would have been told that he had been assigned to such and such a studio.

Q. And you are basing that simply on the method of doing business at that time?

A. That was our established procedure.

Q. And you personally have no knowledge of what was said to Mr. Paris or what was not said to him during the course of the telephone call that was placed to him by Mr. Wile or whoever it was?

A. No, I don't.

MR. HOLTZMAN: Thank you. No further questions.

MR. KNOPF: Any questions?

(Committee members shake their heads.)

MR. MENDONSA: At this time I would like to make an

offer of proof.

MR. KNOPF: One thing. As Trial Committee Exhibit No. 5 we would like the card submitted.

MR. MENDONSA: Why don't you let me make an offer of proof, and maybe it will not be necessary.

MR. KNOPF: Fine.

MR. MENDONSA: During the recess I called Mr. Sheldon Wile and asked him if he had made the contact on February 27. He recalled that he had. I asked him specifically if he had given an assignment to Mr. Paris. He said that he did not actually give an assignment. He said that he told him he was calling to give him an assignment, before he could actually tell him where he was assigned that Mr. Paris then went into his excuses as to why he could not picket. He was not actually told where he should report or at what time he would be expected to report for picket duty. And I offer that in as an offer of proof instead of bringing Mr. Wile in here to testify to that.

MR. HOLTZMAN: I will stipulate if Mr. Wile was called as a witness he would so testify.

MR. KNOPF: I don't think we need the card.

I am curious, Mr. Mendonsa. Perhaps you can answer this, or maybe Mr. Wilber. Both of you. Was any mailing sent to the membership prior to the calling of the strike regarding picketing or picket assignments which would be forthcoming?

MR. MENDONSA: The March 20 Rules for the Conduct of Members During a Strike.

MR. KNOPF: March 20?

MR. MENDONSA: February 20. Was sent to every member of the Guild.

MR. KNOPF: Are you aware of No. 22 of the Rules for the Conduct of Members During a Strike?

(Reading)"A member if chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communcation."

Et cetera, et cetera.

Would that in your mind imply that Paris knew that pickets were going to be established and he would have a responsibility to picket?

MR. MENDONSA: If you are asking me, that isn't really a decision for me. It's a decision for the trial committee.

MR. HOLTZMAN: Is it your suggestion of the question that Mr. Paris was made aware of a specific assignment of a time and place to picket?

MR. KNOPF: I am going to withdraw my question. I think I am arguing the case.

MR. MENDONSA: If I may have a moment just to see if there were any other mailings.

I am sure, Mr. Chairman, if there were any

mailings other than the February 20 rules prior to February 27 --

MR. KNOPF: I think one point to clarify what has been in my mind, apparently he was contacted for picket duty but no specific assignment was made. Is that fair, Mr. Wilber?

THE WITNESS: Well, I would say he was by the committee assigned but, apparently, according to Mr. Wile's statement, wasn't given a chance to be given that assignment. But he was assigned on the rolls of the strike services committee to do duty at Burbank Shift B.

MR. KNOPF: We have no further questions.

MR. MENDONSA: I don't either.

MR. HOLTZMAN: No further questions.

MR. MENDONSA: I have one other witness. Mr. Griffith.

ALAN GRIFFITHS,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q State your full name and spell the last, please.

A Alan, A-l-a-n, Griffiths, G-r-i-f-f-i-t-h-s.

Q Mr. Griffiths, you testified in prior hearings that you are the Assistant Executive Director of the Writers Guild of America, Inc.; is that correct?

A That is correct.

Q. And how long have you held that position?

A. Since September 1st, 1972.

Q. Now, also in previous hearings, Mr. Griffiths, you testified that any member who wished to enter a struck premises would make a request or should have made a request to you for a pass to enter the premises; is that correct?

A. That is correct.

Q. And that you keep a record of all such requests and all such passes issued; is that correct?

A. That's correct.

Q. Have you, upon my instructions, checked your records to find out if a request had been made by Mr. Paris to enter any struck premises?

A. I have checked.

Q. And have you found your records to reflect that such a request was made?

A. No request was made and no pass issued, to the best of my knowledge.

MR. MENDONSA: I have no further questions.

MR. KNOPF: Mr. Holtzman?

EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Griffiths, in line with your policies at that time -- I am referring now to March 6, 1973 -- had Mr. Paris requested a pass for the purpose of entering the Walt Disney Studios in order to perform services for Walt Disney Productions as executive story editor, would you have

issued any such pass?

A. I would not have been so empowered under the Guild strike order and the strike rules.

MR. HOLTZMAN: Thank you. I have no further questions.

MR. MENDONSA: No questions.

MR. KNOPF: The witness is excused.

Thank you very much.

Do you wish to continue, or do you want to recess?

MR. MENDONSA: I am just going to offer into evidence the writer's credit record, work record, and dues records. I would offer now as Guild Exhibit 1 the writer's credit record for Frank B. Paris.

I would ask that we stipulate that this is a record kept in the normal course of business.

MR. HOLTZMAN: So stipulated.

MR. MENDONSA: And I offer this into evidence as Guild Exhibit 1.

I will offer into evidence as Guild Exhibit No. 2 the work record and dues payments records for Frank B. Paris.

MR. HOLTZMAN: No objection.

MR. MENDONSA: With that the Guild will rest its case.

MR. KNOPF: What is your pleasure, Mr. Holtzman?

MR. HOLTZMAN: Mr. Chairman, we have a witness that will take a half hour. May I have a moment to confer?

MR. KNOPF: Yes.

(Whereupon a luncheon recess was taken until 1:55 P.M., Thursday, May 24, 1973.)

LOS ANGELES, CALIFORNIA, THURSDAY, MAY 24, 1973

1:55 P.M.

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MR. KNOPF: Before returning to the matter under discussion, the Committee has asked for a specific in a previous matter, which is the case against Albert Ruddy. Regarding previous questions and comments of this Committee, would it be possible for counsel to present Mr. Ruddy for personal questions, Mr. Holtzman?

MR. HOLTZMAN: Mr. Chairman, I was not personally present or participating in the Ruddy matter, and I don't want to speak for counsel who had personal charge of that matter. As a general proposition, I understand that Mr. Ruddy and certain of the respondents have declined to be present and to testify personally. And I understand that this is Mr. Ruddy's position. I will certainly communicate to him the Committee's desire that he appear. And I will advise you as to his response.

MR. KNOFP: I would appreciate that. Possibly you can get the information during one of the various recesses this afternoon, possibly.

MR. HOLTZMAN: It might not be that simple. I understand Mr. Smith has gone to New York, and I am not sure what the lines of communication are. I will try to get the information, and report back to the Committee or counsel as soon as possible.

May we go off the record for a minute.

MR. KNOPF: Of course.

(Discussion held off the record.)

MR. HOLTZMAN: We are prepared to proceed now.

MR. HOLTZMAN: Thank you very much. Are we at the point, Mr. Mendonsa --

MR. MENDONSA: We have rested.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Mr. Chairman, on the behalf of respondent, we respectfully move for the dismissal of the charges against the respondent on each and all of the grounds asserted. With respect to the evidence that has heretofore been presented by the Guild, there, of course has been no showing that he received a specific assignment to picket, and, therefore, the record discloses no refusal to accept a specific assignment to picket.

There has been no clear showing that there was a picket line at Walt Disney Studios at the day and time and place in question nor any showing that there has been a picket line crossed. The only evidence is that the picket captain and others were standing there, that a person identified solely by hearsay as Mr. Paris drove by, smiled, and waved. The evidence indicates that he drove by a group of persons standing in area near the gate. The evidence shows no more than that.

Indeed, at this point, the record discloses nothing more than that a non-current member of this Guild drove by a corner or drove into a gate. Nothing more than that.

On each and all of the grounds asserted concerning the jurisdiction of the panel, the lawful -- or the lack of a legal basis for the charges, and on the ground that the evidence fails to support the charges, we respectfully move that the matter be dismissed of the Guild's case.

MR. KNOPF: We will recess -- I have been warned not to use the word "briefly"; it's prejudicial -- after we hear from Mr. Mendonsa.

MR. MENDONSA: I believe the Guild has shown its case, that an attempt was in fact made to give the respondent a picket assignment on February 27 of 1973, that he refused that assignment and thereby violated Rule 28 of the Rules for the Conduct of Members During a Strike. The fact that the actual time and date of the assignment was not given to him was not vitiate the fact that he in fact refused to accept any assignment. It was testified to by Mr. Wilber that assignments were being given out, the duration of those assignments, and the actual assignment that would have been given to Mr. Paris if he had accepted it. The facts also show that Mr. Paris apparently was not even interested, apparently, in hearing about his assignment that nonetheless refused to accept any assignment.

The testimony of this crossing the line is hearsay. I cannot deny that it is hearsay. It is, however, testimony that this Committee is able to accept. We are not adhering to strict rules of evidence. There is testimony on the record of one witness, a stipulation that another

witness would have testified to the same, that an individual did cross the line, that an observation was made of the person crossing the line, that that person made greetings to another third person who identified the person crossing the line as that of Frank Paris. An individual -- The person making the observation or identification was one who worked at the same studio with Mr. Paris.

So I think that we have in fact proof in this case that Mr. Paris has in fact violated strike rules 23 and 12 and 13.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: I just wish to emphasize the point I think Mr. Mendonsa's argument begs the question on the point I am trying to make. I think you have to do more to establish the existence of a picket line and to establish the fact that the existence of that line was brought to the attention of the respondent than just to put on testimony that says "I was standing there along with my husband and this young lady." There has been no showing that there was anything at this gate which to an observer would constitute a picket line. There has been no showing that there were signs, there is no showing that pickets were marching, there is no showing that a line of demarcation had been established to cross off that gate. Indeed, to the contrary, all that has been demonstrated is that three people were standing together in a conversation group. And this is not enough to prove the existance of a picket line at that time and place. And it is certainly not enough to prove to Mr. Paris, if it had been

he driving up to that gate on Buena Vista, that a picket line had been established. I am talking about a failure of proof.

MR. MENDONSA: May I remind the Committee that the testimony of Phyllis White was that she was in fact picketing between 8:30 and 9:30 on the morning of March 6, 1973, at the main gate of the studio and during that time saw Mr. Parson or a person who has been identified as Mr. Paris cross into the studio through the main gate.

MR. KNOPF: May we recess at this moment for a period of time.

(Recess.)

(Allen E. Susman and Arnold Shane enter the room.)

MR. KNOPF: We are back in session.

Mr. Lavery.

MR. LAVERY: Mr. Chairman, because of pressure of time and the need of proceeding with other cases, it is the feeling of this Committee that we should take the motion to dismiss under advisement and proceed with the other cases immediately on our calendar, returning to this one at the earliest appropriate moment with due notice to counsel.

MR. MENDONSA: Are you proposing that --

MR. HOLTZMAN: I am not sure I understand the ruling.

MR. LAVERY: We are not ruling on the defendant's motion. And we are aware of the pressure of time and the other cases waiting to be heard. We recognize the importance of the motion on which to take it under advisement and more

thorough discussion in committee.

MR. HOLTZMAN: Would it be the desire of the Committee, then, that the matter stand in recess without the taking of further testimony at this time?

MR. LAVERY: At this time.

MR. HOLTZMAN: May we have an opportunity to confer?

MR. LAVERY: Certainly.

MR. HOLTZMAN: Off the record, please.

(Brief recess.)

MR. HOLTZMAN: Back on the record.

We accept the ruling of the Committee. And it is our understanding that this matter will stand in recess until such time as the Committee is prepared to rule on the motions. And, of course, if the resolution of the motion is against us, we shall reschedule and complete the balance of the hearing.

In this regard, I want to point out to the Commitee and counsel, so there can be no misunderstanding, the witness who is here now, Mr. Dover, will be available given reasonable notice during the balance of this month and the month of June. However, he departs from the country for a period of 60 days commencing July 5 and therefore --

MR. KNOPF: Is it Mr. Dover?

MR. HOLTZMAN: D-o-v-e-r, Dover.

MR. KNOPF: We will get to this matter again as soon as we possibly can. And I am deeply distressed that you had to stay here all morning.

MR. WILLIAM B. DOVER: All right. It is very interesting.

MR. KNOPF: I think you are very kind and generous. I think we will ask you to leave now unless there is some reason on Mr. Holtzman's behalf.

MR. HOLTZMAN: This matter is in recess. May I have just a minute?

MR. KNOPF: Of course.

(Brief recess.)

MR. KNOPF: We will return to session.

We have something to say before proceeding.

MR. LAVERY: Mr. Chairman, in relation to the Paris matter, the Committee, in relation to the continuance of the hearing, has a request to make of counsel for the Executive Director of the Guild. If possible, we would like to have heard at the next meeting of this Committee in relation to the Paris matter Shelly Wile and the woman named by Mrs. White as having seen Mr. Paris cross the picket line.

MR. MENDONSA: It is Sue Milburn. Shelly Wile will testify, and Miss Milburn has declined to testify.

MR. LAVERY: Well, let's hear Shelly Wile.

MR. HOLTZMAN: I might point out for the record that the testimony of Shelly Wile is in evidence in the sense that Mr. Mendonsa stated on the record by way of an offer of proof as to what the man would testify if called, and we accepted this and stipulated if called he would so testify. His testimony is thus in the record. Now, obviously, he could be subject to cross-examination by us or the Committee.

MR. POE: Mrs. Milburn is the one who is an employee of Disneyland?

MR. MENDONSA: She was. Whether she is now or not, I don't know. I will again call her and ask her to testify. But at this point she has declined .

MR. LAVERY: Have you indicated that we would like to hear Shelly Wile anyway? Accepting the offer of proof, it would still be helpful if we could talk with him.

MR. POE: Could you ask Mrs. Milburn if we could talk to her again?

MR. MENDONSA: Certainly.

MR. KNOPF: I will proceed with the next case.

(Whereupon the hearing was continued.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, CAROL J. GERTZ, CSR, a Notary Public of the State of California, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing 62 pages represents a full, true and correct record of said proceedings.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 20 day of June, 1973.

Carol J. Gertz
Notary Public of the State of California

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

In the Matter of	)
	)
WRITERS GUILD OF AMERICA, WEST, INC.	)
	)
	)
vs.	)
	)
	)
COLES TRAPNELL	)
	)

HEARING OF COLES TRAPNELL

Los Angeles, California

May 30, 1973

Reported by:

PETER M. RUNKLE,
Notary Public

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of	)
	)
WRITERS GUILD OF AMERICA, WEST, INC.	)
	)
vs.	)
(Cobb, Flaherty) BENEDICT ~~FREEDMAN~~	)

INTRAUNION DISCIPLINARY HEARING OF BENEDICT FREEMAN, heard before Christopher Knopf, Chairman; Bob White, Karl Tunberg, Michael Blankfort,and Emmet Lavery, taken on behalf of Writers Guild of America, West, Inc., at 8955 Beverly Boulevard, Los Angeles, California 90048, commencing at 2:15 p.m., Wednesday, May 30, 1973, before Peter M. Runkle, Notary Public.

A P P E A R A N C E S:

FOR WRITERS GUILD OF AMERICA, WEST., INC.:

JOHN MENDONSA, ESQ.
8955 Beverly Boulevard
Los Angeles, California 90048

FOR THE RESPONDENT:

LOEB & LOEB
BY: ROBERT A. HOLTZMAN, ESQ.
SAUL N. RITTENBERG, ESQ.
DAVID G. MILLER, ESQ.
1 Wilshire Building
Los Angeles, California 90017

and

ROSENFELD, MEYER & SUSMAN
BY: ALLEN E. SUSMAN, ESQ.
9601 Wilshire Boulevard
Beverly Hills, California

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INFORMATION TO BE INSERTED:

[None]

MR. KNOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus Coles Trapnell. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

The members of the Trial Committee are Michael Blankfort, Karl Tunberg, Robert White, Emmet Lavery, and Christopher Knopf, Chairman.

Will the parties please state their appearances for the record? For the Guild?

MR. MENDONSA: John A. Mendonsa, appearing for the Guild in behalf of the Executive Director.

MR. KNOPF: For the respondent?

MR. HOLTZMAN: Loeb & Loeb, by Robert A. Holtzman and Saul N. Rittenberg for the Respondent Coles Trapnell.

MR. SUSMAN: Allen E. Susman of Rosenfeld, Meyer & Susman also for Mr. Trapnell.

MR. KNOPF: Also present are four gentlemen a. the end of the table, George Eckstein, Barry Oringer, Leigh Vance, Millard Kaufman, and, just arrived, Danny Arnold, who will be observing for the Guild, in that they will be future members of Trial Committees. They will not participate in either questions or determinations. Formally, I would ask if you have no objections to that.

MR. HOLTZMAN: We have no objections.

MR. KNOPF: Thank you. Are there any other appearances to be made in this matter?

Let the record show that there was no response.

In that these are closed hearings, I will ask that anyone else not directly connected with these hearings please leave.

It is customary at this time, Mr. Holtzman, to ask you to make an address.

MR. HOLTZMAN: Thank you, Mr. Chairman.

In the case of the proceedings which have occurred prior to this one, we have certain objections and motions to present at the outset. I recognize that some of the members of the Committee present here today have not heard or considered these objections and that other members have heard and considered them at great length. In the interests of time and expeditious procedure, therefore, I will state each motion and each ground of motion and will not argue any of these matters at length. I do wish to point out to the tribunal, however, as in the case of each of these sessions that has occurred prior to today, I do not want the Committee to assume because we are trying to be brief and to save time that we are simply making these statements for the record or that we do not urge each motion with complete sincerity and objectivity. We mean what we say here, and we do not wish any of these matters to be treated lightly, simply because they will not be argued with as much length and completeness as they were presented at the earlier hearings.

For this purpose, therefore, I would ask that there be incorporated by reference in this record and set

forth at length each ground of objection and each argument and authority in support of the objection, which we previously presented at the disciplinary hearings in respect to David Victor, Albert Ruddy, Herman Saunders, Michael Chrichton, Frank Paris, Jerome Bredouw, and Jon Epstein. Would that be satisfactory, Mr. Mendonsa?

MR. MENDONSA: Yes.

MR. HOLTZMAN: And, of course, as in the past, we will permit the record to indicate that the arguments and authorities in opposition may also be included in the record.

MR. KNOPF: Would you be so good as to number them, please, just for general reference.

MR. HOLTZMAN: Certainly. All right, the first motion, Mr. Chairman, is to require the Guild and its Executive Director to present the charge against Mr. Trapnell in the form and in the substance required by the Constitution and Bylaws of the Guild and in the form required by law. The grounds of the motion are as follows: First, that the Constitution and Bylaws are very specific. They require the Guild to furnish to the respondent a copy of the charges, and this is so whether the charges be asserted by the Board or by a member. This has not been done. All that has been received is a notice of hearing and a summary or statement of the charges recapitulated by the Resident Counsel. This is not the same thing as the charges, and, both as a matter of law and as a matter of the Constitution and Bylaws, the respondent is entitled to

be furnished not with a mere notice but with the charges themselves. The authority in that regard is Article 10B, Section 1 of the Constitution and Bylaws, also Section 5, also, Section 41185 of the Labor Management Reporting and Disclosure Act.

Ground 1A of our motion is to dismiss the charge against Mr. Trapnell on the ground and for the reason that it is vague, uncertain, and ambiguous. In that regard the charges state that on certain specific dates which are mentioned Mr. Trapnell is alleged to have crossed a Guild picket line "for the purpose of rendering services to Universal City Studios, Inc."

Our point in that regard is that Mr. Trapnell is entitled to be advised of the nature or type of services which he is alleged to have performed, which services are in no way specified in these charges.

Our authority in that regard again is the Constitution and Bylaws of this union itself and, specifically, Article 10, Subdivision B, Section 1 of the Constitution and Bylaws and the same section of the Labor Management Reporting and Disclosure Act, to which I have previously referred.

Next, it is our understanding --

MR. KNOPF: This is No. 2?

MR. HOLTZMAN: This is Ground No. 2. Thank you, Mr. Chairman.

It is our understanding that Mr. Trapnell is not a current member of the Guild and therefore is not entitled to vote in respect to such matters as the strike

itself and the adoption of the Rules for the Regulation of the Conduct of Members during a Strike, which he himself is charged to have violated. Therefore, we move to dismiss the charges on the ground that Mr. Trapnell has been deprived of due process of law and equal protection of the law, in that he is charged with the violation of rules, notwithstanding the fact that he was not permitted the opportunity to vote on the adoption of those same rules.

Motion No. 3, Mr. Chairman, is to require clarification of a latent ambiguity in the charges against Mr. Trapnell. I refer specifically to this situation. Mr. Trapnell is charged, as I stated, with having crossed a picket line for the purpose of rendering services for Universal City Studios, Inc., which services are in no way specified. As I have previously indicated to the Committee in prior hearings at the same time these charges were being asserted against the respondent, this Guild was stating in proceedings before the National Labor Relations Board that discipline against members is threatened only for the purpose of dissuading members from crossing picket lines to perform writing work, as defined in the recently expired collective bargaining agreement with the association. I refer to the answer filed by the Guild in cases 31 CB-1203-2 and 31 CB-1223 presently pending before an administrative law judge of the National Labor Relations Board.

The ground of the motion is that Mr. Trapnell is entitled to be advised in advance whether, as indicated in the Board proceedings, the purpose of this proceeding

is to seek to dissuade him from performing writing services as defined, or whether to dissuade him from performing any services as might be inferred from the charges presently pending. He is entitled to know, and not being given this information, he is being deprived of procedural due process of law.

As Ground No. 4, we move to dismiss, or in the alternative to stay, these proceedings, in that they are not being conducted in accordance with the Constitution and Bylaws of the Guild. In that regard, Article 10B, Section 6 provides very specifically that the charges are required to be presented by the Executive Director, Mr. Franklin.

As indicated in the appearances previously noted, Mr. Franklin is not present, and the charges are sought to be presented by Resident Counsel. The articles do not provide for the delegation of the obligation to proceed,and Mr. Trapnell is entitled to be confronted by the person who has presented the charges against him.

We move to dismiss or in the alternative to stay the matter, in that the Guild's procedures themselves are not being complied with.

As Ground 4A, a ground not previously asserted, we move to dismiss or in the alternative to stay the proceedings, in that they are not being presented in accordance with the Constitution and Bylaws of the Guild, in that this panel is not constituted in accordance with the provisions of the Constitution and Bylaws. It would

appear from Article 10B, Sections 4 and 5, read together, that the Committee is to be constituted before the charges are asserted.

Implicit in this, we believe, is that the respondent is entitled to be advised in advance of these members of the Committee who are to hear the charges against him, in order that he may present any claim of bias prejudice, or interest that might be personally available to him. Consistent with this, Mr. Mendonsa kindly supplied us in advance of the previous hearings with a list of the persons from whom the Committee was to be selected. We note from the announcement at the outset of this hearing that there are persons sitting on this Committee who are not included in the enumeration of members previously furnished to us, and it is necessarily to be inferred that this Committee was selected not only after the charges were made and those thereof given and indeed after the proposed membership of the Committee was communicated to us. We feel that a significant element of notice in the opportunity to be heard by an impartial tribunal is the provision of the Constitution and Bylaws itself, that the respondent be advised at the time of the notice of hearing of the membership of the Committee, and this element of procedural due process contained in the Guild's Constitution has not been complied with. That was Ground 4A.

As Ground No. 5, we move to dismiss the proceeding for the reason that the Guild has no jurisdiction to impose or to threaten to impose discipline on any member

who is acting in an executive capacity or in the capacity of a management representative. Now, it is a fact of common knowledge in this industry, we understand, that Mr. Trapnell has performed services for the last six or seven years solely in the capacity of a script consultant or script supervisor, and that such is either an executive or a management representative.

We have previously argued and cited authorities at length to the effect that such services do not fall within the jurisdiction of the Guild and that the Guild is committing an unfair labor practice in acting contrary to the law in seeking to impose discipline on persons employed in these capacities.

At the conclusion of the hearing last Thursday, our attention was drawn to a recent decision of one circuit court which may possibly throw some question as to the viability of this rule in this circuit. The fact remains that the Board persists in its position, and other courts have held consistently with our position, I believe, that it is neither necessary nor appropriate to argue with the law at this point and before this Committee, but we do urge in the strongest possible terms the inapplicability of this Committee's jurisdiction to services of an executive- or management-representative nature.

As Ground No. 6, we move further to stay or to postpone these proceedings until such time as the National Labor Relations Board hearing presently pending has determined those legal issues to which I adverted in

Ground No. 5.

As Motion No. 7, we move to dismiss this proceeding on the ground that the Guild has no jurisdiction to discipline or to attempt to threaten to discipline persons acting in fields of endeavor outside of the scope of the exclusive bargaining jurisdiction which has been conferred upon it. As I indicated, Mr. Trapnell is not employed as a writer. He has not for many years last past been employed as a writer. He does not perform writing services, and these are facts of common knowledge in and throughout the industry. The Guild, we submit, is acting in excess of its jurisdiction in attempting to regulate matters beyond those for which it has been accorded the status of an exclusive certified bargaining representative.

Before I proceed to Ground No. 8, let me make this statement, and this particularly for the benefit of the gentlemen who are on the Committee which has heard these various motions previously. I am going to make certain statements concerning this Committee and concerning certain of its members. By this, I certainly do not mean to impugn the independence or integrity or reputation of any member of this Committee. To the contrary, I have the deepest respect for each of the gentlemen sitting on this Committee as individuals and as a Committee, and I do not mean to suggest in any way that the respect is any way limited or that I threaten to throw any aspersions upon any of you.

What I have in mind here, when I start talking about prejudice and bias and interest, is the subconscious, unavoidable predilection toward one side or other which is inherent in any situation where one has long lived with a particular school of thought or belief or has dedicated a substantial part of his career to a particular objective or where one has a personal or professional or societal interest in the outcome of the controversy.

What we propose here -- this is our ground of Motion No. 8 -- is that this hearing be dismissed on the ground that the tribunal has not been constituted in accordance with the Constitution and Bylaws of the Guild, in that there has been selected for its membership persons who have long been in a position of responsibility or in an executive capacity in the Writers Guild of America, West, Inc. or its predecessor organizations.

The Bylaws themselves recognize the point that I am trying to make, by providing that the Committee shall be constituted of members, none of whom is interested in the proceeding other than as a Guild member. This Committee is not so constituted. To the contrary, it is constituted of persons who have long had an intense personal interest in the Guild's activities at its highest levels. These persons, you gentlemen, cannot possibly fail to recognize the relationship between proceedings such as these and the objectives and the strategy of the pending strike itself, and for this reason we respectfully move that the Committee dismiss the proceedings or in the alternative permit them

to move ahead only through the medium of a totally disinterested panel or tribunal.

As Ground No. 9, we challenge any panel which is composed of members of the Writers Guild of America, West, Inc., on the ground that, during the pendency of this strike, no member could act impartially and that only a totally disinterested person could impartially sit in judgment at this time and in this context.

Mr. Chairman, Ground No. 10 referred to in some of the cases is not pertinent in this particular matter, and there will, therefore, be no ground of objection of that number.

Ground No. 11 is to dismiss the charges or in the alternative to stay the proceedings or to postpone it until a substantial time following the pending strike. The reason for this is that the existence of publicity, the existence of an emotionally charged atmosphere, which has resulted from that publicity, the existence of strong emotions on all sides and particularly on the part of those persons who are trying to sit in judgment here today, prevents this matter from proceeding in the calm, deliberative atmosphere which is necessary for a quasi-judicial proceeding such as this. It is our feeling that this matter should not proceed at all because of the excessive publicity, and certainly that it should not proceed until such time as the strike is over, tempers have had the time to cool, emotions to be less fervent, and the matter can proceed properly, calmly, and deliberatively.

I have moved through these motions very, very rapidly. By this I do not mean to denigrate them. We feel that each one is well-taken and that each provides more than an adequate basis for staying or even dismissing the proceeding.

We respectively feel that the cumulative effect of all these motions, taken together, imperatively demands that this Committee dismiss the charges or, at the minimum, continue them to an indefinite date into the future.

MR. SUSMAN: Mr. Chairman, before you rule on that, I would like to say a word, if I may.

MR. KNOPF: Certainly.

MR. SUSMAN: I would like to amplify Ground 4A, Motion 4A, in which Mr. Holtzman alluded to the testimony because of the reason it hasn't come up before, and the reason it hasn't come up before is that at the four prior hearings at which I have been a counsel the Board or the Trial Committee consisted of the same five members, and today for the first time we have Mr. Tunberg and Mr. White in place of Mr. Poe and Mr. Monaster.

Now, under the Constitution of the Writers Guild -- I am referring to Section 4 at the moment of Article 10B -- it provides that within 15 days after a decision is made to proceed with a disciplinary hearing or within 15 days after written charges have been filed with the Executive Director, the Board shall select five current members in good standing, none of whom is interested

in the proceedings other than as Guild members to act as a Trial Committee.

Under date of April 27th, 1973, Mr. Mendonsa advised us that the panel consisted of Mr. Blankfort, Mr. Knopf, Ed Hartman, Mr. Lavery, Mr. Poe, George Seaton, and Mel Shavelson. He also advised us that any five of those members may sit as a panel to hear disciplinary cases. Then calling your attention to Section 5 of Article 10B of the Constitution, it provides that after the Trial Committee has been selected, a copy of the charges shall be served upon the member against whom the charge has been made, accompanied by a notice designating the date and place of hearing, which notice and charges shall be served in person or by registered mail, the hearing dates so noted to be not earlier than 15 days after the date of such service. If you put those pieces together, it would seem to be abundantly clear that this panel is not properly constituted and appropriate notice has not been given to Mr. Trapnell pursuant to your own Constitution.

MR. KNOPF: Mr. Mendonsa?

MR. MENDONSA: Yes. In previous hearings I have simply relied upon the arguments made in opposition to the motions that were of record, but since we have two new members on this panel, I will elaborate a little bit, at least on some of the motions.

With respect to the first motion, the motion to dismiss since the charges were not served in accordance

with Article 10 of the Constitution, we have argued before that Article 1 and Article 5 would have to be interpreted by the Board, who is the only body that has the authority to interpret the Constitution and Bylaws, and that is provided and given exclusively to the Board of Directors by Article 3, Section 2, Subsection K of the Constitution.

It is the Board's interpretation through its actions of proceeding in the manner in which it has that the Constitution and Bylaws do not require that the actual written document that is submitted by the Board of Directors to the Executive Director must be sent to the respondent. What has been sent to the respondent is an actual representation of the charges that have been made. I have made that representation in the prior hearings. The real question being presented is whether or not the respondent has been denied due process of law by failure to receive an actual copy of the document that is referred to in Sections 1 and 5 of the Constitution and Bylaws. Since he was served with a true and accurate representation of the charges that were filed, he has not been denied due process by having been denied the opportunity to prepare his case.

He has been given ample time to prepare the case and has been accurately advised of what charges are being brought against him.

With respect to the requirements of the Labor Management Reporting and Disclosure Act, the National Labor Management Reporting and Disclosure Act, Section 41185

does not require that he be served with the actual charges that the Board has served by the Executive Director. What it does require is that he be advised of the specific charges that are being brought against him in this case. As in all the rest of the cases, that has been complied with.

With respect to Motion 1A, the motion to dismiss because the charges are vague and indefinite, in this case the charge is quite specific. It charges the respondent with having violated two sections of the Rules for Conduct of Members during a Strike dated February 20, 1973. It specifically states what those charges are. It specifically charges him with having crossed a picket line at Universal City Studios, Inc. on or about March 12th and April 2 of 1973 for the purposes of rendering services for Universal City Studios, Inc., which company was at that time on the Guild strike list. It is immaterial what type of services were being rendered, whether they were writing services or other services. The Guild brings these charges since this person is a member of the Guild, and as a member of the Guild, he is obligated to comply with the Guild's strike rules and strike orders.

With respect to the third motion, the motion charges that the Guild's charge is ambiguous, inasmuch as the Guild filed a complaint in the National Labor Relations Board hearing that is now pending. In the Guild's answer, it claimed that it was only threatening

action or admitted it was threatening disciplinary action against members of this Guild who are crossing the line to render writing services. That answer as stated in the first of these records in the David Victor case. In any event, it is the Guild's position that the answer filed by the Guild in the National Labor Relations Board proceedings is immaterial to this case, inasmuch as the charge was not sent to the respondent, the charge from the National Labor Relations Board, nor was the answer sent to the respondent, and the Guild never made any allegations that it was not proceeding on the basis that there was a violation in this case for having crossed the line for rendering services of any kind.

As for a clarification, I think that the record now stands clear that the Guild is proceeding in this matter against the respondent, because he did render services not only of a nature of writing services but of any type of services.

With respect to the fourth motion to dismiss because the case is not being presented to this Trial Committee by the Executive Director of the Guild, as set forth in the Article 10 of the Constitution and Bylaws. It seems clear, that, although Article 10 says that the charges will be presented by the Executive Director, that the Executive Director would have a right to delegate those duties. The duties of the Executive Director are set forth in the Constitution and Bylaws in Article 3, Section 3, Subsection B, and it is clear in that section

that all of the duties and responsibilities of the Executive Director could not possibly be carried out by the Executive Director personally.

So it seems that it must logically be interpreted that the Executive Director has the authority to delegate his responsibilities. In any event, whether or not he does is a matter of interpretation which is the exclusive right of the Board of Directors. The Board of Directors has in fact interpreted that section and those sections of the Constitution and Bylaws by proceeding in the manner in which it has proceeded.

Again, the real question here is whether or not the respondent has been denied due process of law by the fact that the case is being presented by the Resident Counsel of the Guild, as opposed to its Executive Director. I submit that the respondent is not being denied due process of law in any way. No argument has been made in the motion or by the respondent's counsel that the respondent is being denied in any specific way as to his due process of law by not having the case presented by the Executive Director in person.

With respect to the fifth motion, motion to dismiss on the basis that he --

MR. KNOPF: Is this 4A?

MR. MENDONSA: I'm sorry. I was going to 5, but let's go back to 4A. I was passing that up.

MR. KNOPF: Do you want to come back to that one?

MR. MENDONSA: I will take them in the same sequence.

This is a motion to dismiss or stay the proceedings, inasmuch as the panel of the Trial Committee is not properly constituted in accordance with the Constitution and Bylaws, Article 10, Section B, Subsections 4 and 5. I point out to the Trial Committee that those sections relate simply to procedural matters in selection of a board or a trial committee. They are nothing more than procedural matters. There is no requirement in the Constitution and Bylaws anywhere that states that the respondent will be notified in advance of who will sit on that panel or the Trial Committee. There is no right given to the respondent anywhere in the Constitution and Bylaws to challenge any member of the Trial Committee. At the request of the respondent's counsel, I responded by letter dated April 27th, 1973 and advised the respondent of the eight persons who were then currently making up the panel and I stated specifically that the Committee currently consists of the following eight persons, and they were named. It would be ridiculous to assume that the Board of Directors does not have the right to add persons to the Trial Committee, change them, or substitute them. If in fact we were to take a strict constructionist view of the Constitution and Bylaws, it would provide that the Board of Directors would select five persons, which would mean no more than five. Now, in the event that one of those persons was unavailable to serve at the time that the trial came up, either because of some

infirmity, change of location at the time, or whatever, I suspect then that the motion would be to dismiss on the basis that the five persons selected are not present. I submit that this is a ridiculous construction and that it should not be so interpreted.

With respect to the fifth motion, a motion to dismiss, inasmuch as the proceedings are illegal within the interpretation of the case law of the National Labor Relations Board, it has been pointed out that there has been a recent decision, a copy of which we got just last week, a decision from the Ninth Circuit, which would indicate that the higher courts are not going along at least in this jurisdiction with the interpretation heretofore given by the National Labor Relations Board. That is in conjunction also with the fact that the District Court of Appeals in the District of Columbia has also granted a petition for rehearing in the case, in which they upheld the Board, which seems to indicate that there may very well be a change forthcoming in the Board's decision, but in any event that matter may still be unsettled.

It may be something that the Board will have to decide as to what it is going to do. It may decide that it will eventually dismiss these cases. It may decide that it will challenge them in other jurisdictions and finally take them to the Supreme Court, provided the Supreme Court will even grant the court's petition for a hearing.

But that all remains to be seen. Until the

Guild is proven to have violated the law, the National Labor Relations Act, there is no reason why this Board cannot proceed.

With respect to the sixth motion, the motion to stay or postpone the proceedings until a decision has been made by the National Labor Relations Board in the proceedings that are now pending before that body, we have no idea when the National Labor Relations Board will render a decision, if they ever will in our case. We don't know. They may say that they have second thoughts about the case in view of the Ninth Circuit's decision or perhaps some other case decisions that have come down from other circuits.

In any event, I suspect that once the motion is made to stay or postpone the proceedings until a decision of the National Labor Relations Board, it follows that since that decision will not be determinative -- we are sure if it is against us -- that there will be a motion to stay or postpone this proceeding until a final decision of a court of law. And that may very well be the United States Supreme Court, which may be many years from now. By that time, memories of the events and occurrences that have happened in this case specifically will have faded, and justice will not be rendered.

I urge that we proceed in these matters now.

With respect to the seventh motion that these charges should be dismissed, inasmuch as the accused is not a writer, again we urge that this is immaterial.

He is a member of this Guild, and as a member of this Guild, the Guild has a right to require that person or that member to conform to its rules and regulations and has a right to discipline its members, regardless of whether they are supervisors or not actually performing in a writing function. They are members of this Guild, and, as the Ninth Circuit said, the union has a right to discipline its members, all members, even if they are supervisors.

With respect to the eighth motion, a motion to dismiss, inasmuch as this panel constitutes an elite group of the Guild's membership, this respondent has not been denied or will not be denied due process of law because of the manner in which this panel is constituted. This panel has certain experience and knowledge with respect to the organization and history of this Guild, as well as experience in the industry, and I would urge them to draw upon that knowledge and experience in makings its decision.

However, I would also urge that the panel not consider the effects of its decision, whatever effects the decision may have upon the strike.

Which comes to the ninth motion, which is a motion to dismiss or stay the proceedings until the end of the strike, and the basis of the motion is that the Guild or this panel cannot afford to have any member found innocent, because it would have an adverse effect on the strike. I think that the actions of this Committee

in the prior hearings has shown that it is not so influenced. It has in fact by unanimous decision dismissed two cases, which have been presented to it so far, including one whose record has been incorporated in this proceeding.

In any event, I will again urge the Committee not to consider the effects that their decision may have on the strike. I will only urge it to make a decision as to whether or not the member who has been accused of violating the strike rules or the strike orders has in fact committed such a violation.

The tenth motion has not been included.

With respect to the eleventh motion, this is a motion again to continue the hearings until the date after the strike.

MR. KNOPF: Which one is this, John?

MR. MENDONSA: This is the eleventh motion.

MR. KNOPF: Eleventh, right.

MR. MENDONSA: Here we cannot determine when this strike will end or what will actually constitute the end of the strike. We do not know whether or not we will ever actually come to an end of this strike. With respect to certain companies, members of the association, we have already ended our strike. Whether or not we will continue to do so in a piecemeal fashion or whether or not we will actually reach an agreement with the association as a whole, it has yet to come to pass. We do not know whether or when the strike will end.

I urge that we go ahead with these proceedings, inasmuch as holding them off would bring about a fading of recollections, and justice would only prevail if we proceed now.

As to the fact that there may be emotions highly piqued at the time during this strike, again, as I urged twice before already, I asked that the panel not consider the strike in making its decision. But, in any event, we do not know what the emotions of the fact will be or what passions will be aroused at the end of the strike, if there ever comes an end to the strike. They may be very well more piqued, and there may well be more of an emotional climate at that time, which may lead to another motion at that time to dismiss the hearings.

I think then that that is all of the motions, and with that and the incorporation of the arguments that have been made in the prior hearings, we will urge that all of the motions be dismissed.

MR. KNOPF: Mr. Holtzman? Mr. Susman?

MR. SUSMAN: If I may just say a few words in response.

My particular point is to Motion for a Dismissal with regard to the composition of the panel. Mr. Mendonsa has used labels such as "strict construction", "ridiculous", and so on. Insofar as our experience is concerned, it is really not an interpretation at all. It is just a reference, a claim, simple and very clear language of the Constitution, and any differentiation from that is nothing more or less than an amendment or modification of the

Bylaws. It is not a question of construction, because there is nothing to construe. The language is as plain as anybody could possibly make it. In order to amend this Constitution and Bylaws under Article 12 requires a vote of two-thirds of the members of the Guild. Now, punitive proceedings -- and disciplinary proceedings are punitive in nature -- are required to be conducted in strict and precise adherence to the Constitution and Bylaws and other provisions of the labor union or guild in question.

And what you have here is very apparently a complete deviation from the procedure designated in Article 10, and every member of this Guild is bound by those provisions, not only bound by them, but he has the right specified in Article 10, and any different view of it would amount to nothing more or less than a deprivation of a right guaranteed to a member under Article 10 of the Constitution.

MR. HOLTZMAN: Mr. Chairman, I would like to pursue the same train of thought that Mr. Susman has just indicated and expand it to several other grounds of our motion. As Mr. Susman has very properly pointed out, the authority which has been given to the Board to interpret the Constitution and Bylaws does not give it the authority to modify, to amend, to supplement, or detract from the provisions of the Constitution and Bylaws.

Now, in respect to several different grounds where we raise the question whether the Guild is proceeding

in accordance with its own Constitution and Bylaws, Mr. Mendonsa said very simply, "Well, the Board had the authority to interpret."

It is doing nothing but interpreting. We respectfully submit to the Committee that in each of the particulars to which I referred and to which Mr. Susman referred where this proceeding is being conducted other than in strict accordance with the Constitution and Bylaws, we do not deal with the matter of interpretation but rather with an amendment, with a modification, with a supplement, or very frankly with a blatant disregard for the terms of the Constitution and Bylaws.

We respectfully submit that this goes far beyond the bounds of any permissible "interpretation."

[Mr. David G. Miller, co-counsel for respondent who was not present at the commencement of the hearing, entered the conference room.]

MR. HOLTZMAN: A few other very quick comments on Mr. Mendonsa's presentation with respect to Ground No. 3. This relates to the ambiguity created by the disparity between the National Labor Relations Board pleadings, and the charges of Mr. Mendonsa very correctly point out that there has been an amendment to the pleading to which I referred. The fact remains that at that time that these charges were advanced, at the time preparation was under way of a defense against these charges, the public record created by the National Labor Relations Board pleading was

diametrically opposite to the charges preferred here.

Now, I point out, gentlemen, that the very strike rules, the Rules for the Conduct of Members during a Strike, place the members of this Guild on notice of such things as Guild bulletins and announcements and pronouncements and statements in the public press, press releases, a vast variety of publications -- it strains credibility to think that these might give notice, and yet it would appear to be the position of the Guild's counsel that one is nevertheless not even to be concerned with the public record relating to precisely the same subject matter which flies in the face of the pleadings, again on which this particular proceeding is based.

MR. BLANKFORT: Mr. Holtzman.

MR. HOLTZMAN: Sir?

MR. BLANKFORT: Well, of course, as you suspect, we will read the constitutional provisions very carefully when we go into executive session. But would you, since you have it available right in front of you, reply, as Mr. Susman replied to Mr. Mendonsa's comments, that there was no constitutional requirement that the member to be disciplined be notified 15 days before the date of the hearing? Is there such a provision in your reading?

MR. HOLTZMAN: Well, I am not quite sure I understand your question, sir. Article 10B, Section --

MR. BLANKFORT: Well, Mr. Mendonsa --

MR. HOLTZMAN: It would --

MR. BLANKFORT: I beg your pardon. I do not mean

notified about the hearing, but given the list of the panel 15 days or at any time before the proceedings.

MR. HOLTZMAN: Yes. Let me refer specifically to Article 10B, Sections 4 and 5.

MR. KNOPF: Maybe you had better read those.

MR. HOLTZMAN: Section 4. I will read it, and for your information, gentlemen, if you have a copy available, it starts out at the bottom of page 32. It reads as follows:

> "Within 15 days after a decision is made to proceed with a disciplinary hearing pursuant to Section 3 hereof or within 15 days after written charges have been filed with the Executive Director by the Counsel or a Branch Board pursuant to Section 1 hereof, the Executive Board shall select five current members in good standing of the Branch in the case of a Board disciplinary action and the Counsel shall select five current members of the Guild in good standing in the case of Counsel disciplinary action, none of whom are interested in the proceeding other than as Guild members, to act on a trial committee."

All right. Then Section 5, at the top of page 33 goes on to provide:

> "After the trial committee has been

selected, a copy of the charges shall be served upon the member against whom the charge has been made accompanied by a notice designating the date and place of hearing, which notice and charges shall be served in person or by registered mail, the hearing date so noted to be not earlier than 15 days after the date of such service."

Now, our point is very simply this. There is no point and there is no purpose to this procedure which carefully provides for the selection of a hearing committee after the decision has been made to proceed but before notice is to be given, other than to give the respondent the opportunity to be informed of the identity of the members of the panel. Consistent with this and in pursuance of our request, we were advised of the panel from whom the members of the Committee were to be selected. The point is that the very procedure adopted in the seven hearings which we have attended prior to today was consistent with the position that we have taken, namely, that we were advised well in advance of the hearing of the identity of the panel.

MR. BLANKFORT: But there was.

MR. HOLTZMAN: Now, you simply must disagree with Mr. Mendonsa's comments that we have no right to challenge the panel, that we have no right to raise questions of bias or prejudice or interest with respect to any of its

members. Indeed, if his proposition were to be taken as true, there would be a gross violation of procedural due process of law. This is not the type of situation where you are working in a court, a court of the state, where you know who the judges are in advance. At least you know who the panel is from whom your judge is to be selected.

MR. LAVERY: Mr. Mendonsa, may I ask a question? You made the parallelism.

MR. MENDONSA: I'm sorry.

MR. LAVERY: That is, Mr. Holtzman, the thought crosses my mind in relation to the master calendar downtown. You don't really have any idea at a certain time in advance what judge is going to be assigned.

MR. HOLTZMAN: I know that he is one of forty-five, and I know every one of those forty-five men intimately. I may not know which one, but I know the overall panel, and similarly, Mr. Lavery, when we proceeded here prior to today, we didn't know who the precise members of the panel would be, but we knew from whom the group were to be selected.

MR. LAVERY: And you don't know who the members of the jury are either.

MR. SUSMAN: Yes, Mr. Lavery, but --

MR. HOLTZMAN: You have the right to challenge members of a jury peremptorily or for a cause. You have the right to conduct voir dire of the members of the jury.

MR. LAVERY: You said quasi-judicial proceeding, and

I think that is a good description. It isn't really, but there are times when it looks like it. We aren't really judges. We aren't really jury, but in an effort to find out what the facts are, we seem at times to act both like judges and pathfinders and maybe a jury.

I think that my final question was in the grand jury panel you don't know what 12 people are going to hear the case.

MR. HOLTZMAN: Of course, but you have the right to conduct voir dire.

MR. SUSMAN: That's exactly what we're doing here. Whether or not we are entitled to know who the Committee is, it doesn't simply give the answer to Mr. Blankfort's question directly one way or the other. It doesn't say you do get notice or --

MR. KNOPF: Mr. Susman, as a point of clarification, it appears to me that you are challenging these two gentlemen, as you challenged the other nine who were presented here.

MR. MENDONSA: I haven't heard any specific challenge at all. I have only heard a challenge that the Committee is improperly constituted.

MR. MILLER: I believe they challenged the makeup of the Trial Committee as it is constituted prior to today.

MR. MENDONSA: No.

MR. SUSMAN: Well, I --

MR. MENDONSA: May I make a point though.

There certainly has been no challenge of any

person sitting on this Trial Committee for any reason whatsoever, except for the fact that it has not been constituted in their interpretation of the Constitution. Or call it their interpretation of the Constitution. There have been no grounds that anybody sitting on this Committee somehow or other prejudices the right of the respondent. That has not been made. That challenge has not been denied to these people, or that right to challenge has not been denied to the respondent.

MR. HOLTZMAN: Mr. Chairman, in order that we may be perfectly clear on this, we have moved to dismiss the proceeding on the ground that the panel is not constituted either properly in accordance with the provisions of the Constitution nor in specific accordance with the provisions of Section 4 of Article 10B, by which challenge we in effect raise the question of interest in the outcome of this proceeding and necessary bias or prejudice. In response to the point that was made a moment ago by Mr. Lavery, he referred to the selection of a jury. I think it is a very good analogy. When an attorney selects a jury in court, he has an opportunity to interrogate each member individually and personally. We have not been given this opportunity. We don't even know as we sit here today that the five gentlemen at the head of the table are current members, as required by Article 10B, whether you gentlemen are members in good standing, nor -- and this is very significant -- do we really know the extent to which you may be interested in the outcome of this

proceeding or biased or prejudiced toward the individual respondents. I don't even know if you are acquainted with the respondents, but I am sure you are by virtue of their reputation in the industry.

For example -- and I may be incorrect in my information in this regard -- but it has been suggested to me that Mr. White, who is a member of the panel and whom we have met for the first time this afternoon, either was or is a Guild officer or branch officer. I do not know the answer to that. It has been suggested that because of his recent involvement in the affairs of the Guild, he may well be so intimately wound up in the strike and the pre-strike planning as to be incapable of being disinterested. By this I mean no disrespect or disrepute toward the gentleman, but I am just pointing out that at least it has been suggested that in light of his recent activities, he may be too emotionally involved in this entire proceeding to sit in solemn judgment in a quasi-judicial proceeding where fines or other sanctions are threatened to be imposed.

One last point, very quickly, if I may, gentlemen.

In response to each of the motions to stay, Mr. Mendonsa very properly pointed out that we do not know when, if ever, the strike will end. We do not know when, if ever, emotions will cool and tempers will cool, so that dispassionate adjudication would become possible. He points out as a good prosecutor if we wait too long,

memories will fade, witnesses will disappear, and the prosecutor is going to have problems. I think his problem in that regard is very-well taken. Long delay may well prejudice the prosecution, but I am concerned about the defense. I am concerned about the respondent here. I am concerned about proceeding in an atmosphere so highly charged with emotion that my client is not going to be able to get a fair trial. The point is this. What is due process for the charging party may well be a patent violation of due process to the accused, and under both your Constitution and under the federal statutes to which I have adverted, the accused has his right, and I am talking about his rights to be tried by a dispassionate, disinterested, uninvolved tribunal.

MR. BLANKFORT: I think there is only one thing to be said for myself without consulting my bretheren, and I think I may have said it before. Despite the surface situation in which it might be conceived that any group of members would be prejudiced or partial, you are dealing, Mr. Holtzman, with a very human situation which might affect a judge who has never seen the defendant before and who had no prior connection with him. He might dislike the way he combs his hair. This is a very human situation, but I can assure you, since you have several times spoken of your regard for us as individuals, that we do make a genuine effort to be impartial in these situations, that this is a prime consideration of our discussions, and the record has so far shown that we are

capable of being dispassionate and weighing the evidence and coming to a decision in which two of your clients in the cases have been dismissed.

MR. HOLTZMAN: For the record, one so far. If there is another,I would like to know about it.

MR. BLANKFORT: I want to reassure you on that regard, and that is your point about being swayed by emotions. We are quite capable of overcoming it. We are cool.

MR. KNOPF: Mr. White?

MR. WHITE: I have a question to ask of Mr. Mendonsa. Just to elicit fact on point No. 2 of the motions to dismiss on the grounds that the respondent because he was a non-current member, was unable to vote either on the strike itself or on the strike rules that were adopted, can you tell me, was he personally notified that he had the right to vote because his personal contract was affected?

MR. MENDONSA: Well, I can tell you this much. The motion assumes something. It assumes at least that there is no evidence in the record that this man did not have a right to vote on the strike order. The fact of the matter is, he is an associate member of this Guild, who by the Constitution and Bylaws has a right to vote on strikes or restraining orders, as is referred to in the Constitution and Bylaws, if he has a legal commitment to perform writing services. Now, I don't know what kind of a contract he has or had with the company at the time the

strike order was voted on, but if he in fact had a legal obligation under that employment contract, which is quite common to perform writing services, then he would have had a right to vote on the strike order or the restraining order. As far as the rules are concerned, he would not have had a right per se to vote on the rules. They were adopted prior to the strike. However, of course, the strike rules were effective upon the commencement of the strike, so he had a second chance to vote against the strike rules by voting against the strike.

MR. WHITE: May I --

MR. KNOPF: Please.

MR. WHITE: I don't think I got the answer I was seeking. This was the situation. My question was under this situation where if we assume he had a right to vote on the strike, was this right communicated to him? I mean he didn't receive any ballot in the mail. Was he personally told that he has the right to vote on the strike?

MR. MENDONSA: Well, I cannot say specifically that a special mailing was made in that regard. I would have to find that information out. I don't know at this time. However, I do know the Constitution was sent to every member of the Guild, which would give him the right. All he has to do is look up his rights as an associate member. We can assume that any member of this Guild would look up his rights as to membership, and it was spelled out specifically in that section of the Constitution.

MR. LAVERY: Mr. Mendonsa, we naturally assume, nothing to the contrary appearing, that all the members got all the literature to which they were entitled during and preparatory to the strike situation.

MR. MENDONSA: That is correct.

MR. LAVERY: The mailing was massive, as I understand it.

MR. MENDONSA: That's correct. Now, there may very well have been a mailing prior to the meeting of which there was a strike vote that did advise the members that they had a right to vote, if they were an associate or a non-current member, but I cannot say specifically that there was such a mailing. I can tell you though that in January of this year every member was sent a copy of the Constitution and Bylaws, which had been amended, so I assume that any member who would have been affected by the Constitution and Bylaws would have read that portion of it, at least that portion that gave him his rights as a member.

MR. KNOPF: We will recess for a few short moments. I hate using that phrase.

[A short recess was held.]

MR. KNOPF: We will return to session, please.

May the record show that Mr. David Miller of Loeb & Loeb has arrived to join Mr. Holtzman.

The Motions 1 through 11 to dismiss are denied.

At this time I will introduce Trial Committee exhibits. I have a copy of the charges and cover letter

sent by certified mail to respondent on April 10, 1973 with a signed return receipt attached. I have marked these are Trial Committee's Exhibit No. 1. Is there any objection to receiving evidence of Trial Committee's Exhibit No. 1?

MR. HOLTZMAN: Mr. Chairman, may we inquire whether counsel is going to present copies?

MR. MENDONSA: May the record show that I am giving the respondent copies.

MR. HOLTZMAN: I have been handed copies, Mr. Chairman. Thank you.

MR. MENDONSA: And let me get copies for the reporter.

MR. KNOPF: I believe I am waiting to hear if there is no objection.

MR. HOLTZMAN: No objection, Mr. Chairman.

MR. KNOPF: There being no objection, it will be received. I have marked as Trial Committee's Exhibit No. 2 a one-page letter requesting a continuance of the hearing dated April 25th, 1973 addressed to John Mendonsa and signed by David Miller of Loeb & Loeb. I have also marked as Trial Committee's Exhibit No. 3 a two-page letter granting continuance to May 30th, 1973 dated April 27, 1973 addressed to David Miller and signed by John Mendonsa, Resident Counsel, W.G.A.

Is there any objection to the receipt in evidence of Trial Committee's Exhibits 2 and 3?

MR. HOLTZMAN: No objection, Mr. Chairman.

MR. KNOPF: They will be received. I would ask if either Mr. Mendonsa or Mr. Holtzman wish to make an opening statement.

MR. MENDONSA: Yes. Just briefly, we will show that Mr. Trapnell crossed the Guild's picket lines at Universal on or about April 2 of 1973 in violation of the Rules for the Conduct of Members during a Strike dated February 20, 1973, specifically Rules 12 and 13.

MR. KNOPF: For the respondent, Mr. Holtzman?

MR. HOLTZMAN: We will defer our opening statement until the conclusion of Mr. Mendonsa's case.

MR. KNOPF: Mr. Mendonsa, will you make a presentation of the Guild's case.

MR. MENDONSA: We call as our first witness Sidney Ellis.

SIDNEY ELLIS

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Will you please state and spell your name for the record?

A Sidney Ellis, S-i-d-n-e-y E-l-l-i-s.

Q And are you a member of the Writers Guild of America, West, Inc.?

A Yes.

Q. And approximately how long have you been a member of this Guild?

A. West, since 1960. Thirteen years.

Q. Now, since the commencement of the strike on March 6, 1973, have you been serving on the Strike Services Committee?

A. Well, the first week I was a picket, and after the first week of the strike I came on to the committee.

Q. Would you give us a brief description of your duties on the Strike Services Committee?

A. We are called the investigating committee, and we investigate charges that members have refused to picket and crossed picket lines. We try to determine if members are scabbing and breaking or violating strike rules. In general.

Q. I am sorry. I may have misstated it.

It is a strike investigatory committee, as opposed to a strike services committee you are a member of, right?

A. Yes.

Q. Now, directing your attention to April 2 of 1973, did you on that day have occasion to speak with the Guild member, Coles Trapnell?

MR. HOLTZMAN: Mr. Chairman, may I have that question read back by the reporter, please?

[The question was read back by the reporter.]

THE WITNESS: I did.

Q BY MR. MENDONSA: Did you call him, or did he call you?

A I called him. There was a report made, turned in to our office, that he had been seen crossing the picket line entering Universal. I called the Universal Studios and asked for his office. His secretary answered and told me that he was not in his office at the moment, that he would be returning shortly, and I left my name and told her I was with the Writer Guild of America and left the Guild's number and asked him to call me back.

About a half hour later, I think it was after 2:00 in the afternoon, Coles Trapnell returned my call. The secretary called and said, "Mr. Trapnell is returning your call."

I spoke to Coles and told him -- asked him if he knew that he was in violation of the Guild's strike laws by being in his office.

He said he was aware of that and that he had written a letter to Mike Franklin explaining his situation, and that was about the extent of the call.

All I had to do was determine that he was at Universal. I didn't try to talk him into leaving Universal, and I hung up and turned in this report.

MR. MENDONSA: I have no further questions.

MR. KNOPF: Mr. Holtzman?

EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Ellis, did you turn in a written report of the conversation you have just now described to us?

A. Yeah.

Q. Do you have a copy of that?

A. I don't, no.

Q. Have you seen a copy in the last day or two?

A. Yes.

Q. And where did you see that copy?

A. Just now. Mr. Mendonsa showed it to me.

Q. As a matter of fact, did you use it to refresh your recollection?

A. Yeah. I make an awful lot of these calls.

MR. HOLTZMAN: Mr. Chairman, may we have the opportunity to examine that report?

MR. KNOPF: I have no objection.

MR. MENDONSA: Let the record show that I am furnishing a copy of the report signed by Mr. Ellis, which he used to refresh his memory today.

MR. HOLTZMAN: Thank you. May I have a moment, Mr. Chairman?

[A discussion was held off the record.]

MR. KNOPF: On the record. Could you get a copy of the letter that Mr. Trapnell wrote to Mr. Franklin for us, please? We would like to see it.

MR. MENDONSA: We had checked to see if there was such a letter, and we are unable to come up with a letter.

MR. SUSMAN: I have the letter.

MR. KNOPF: Do you have a copy of it with you here?

MR. SUSMAN: Yes.

MR. MENDONSA: If you can give me the date on that.

MR. SUSMAN: March 6, 1973, and it is addressed to Mike Franklin.

MR. MENDONSA: All right. Mr. Susman, would you read the letter?

MR. SUSMAN: Yes, I would be glad to. Do you want it in the record?

MR. KNOPF: Yes.

MR. MENDONSA: May I see it? Maybe I have an objection. I don't know.

MR. KNOPF: We would also like to see a copy of the note that Mr. Ellis wrote to you, if you have no objection.

MR. MENDONSA: I have no objection.

MR. HOLTZMAN: I think I may have an objection, Mr. Chairman. It is replete with hearsay and hearsay on hearsay and has handwriting that is virtually illegible. We have the witness here, and the witness has testified. I don't see how we can do anything other than make the objection.

MR. KNOPF: You are asking me to rule upon my own request. I will have to turn you down.

MR. HOLTZMAN: For the record, I object to consideration of this document on the ground that the witness who prepared it is here and has testified to the same subject matter.

MR. LAVERY: I suggest that if counsel can get it, we

certainly can look at it. Equal treatment.

MR. MENDONSA: May I ask for just one moment, please?

MR. KNOPF: Certainly.

MR. MENDONSA: May I check that out, please, if I may have a moment?

MR. KNOPF: Yes.

[A brief recess was taken.]

MR. KNOPF: We will return to session.

Mr. Ellis's notes on his conversation with Coles Trapnell will be marked Trial Committee's Exhibit No. 4.

MR. HOLTZMAN: Mr. Chairman, before this is done, may I respectfully object to the introduction of the document which you have before you into evidence. In the first place, there has been no foundation laid as to what this document is. It appears to be, as I examined it, in at least three different handwritings. It appears that there is a variety of signatures, none of which have been identified to the extent that it constitutes a memorandum of this witness. The witness has been before the Committee and has testified, and you have heard his testimony. This is cumulative at best, to the extent that it appears to contain matters placed on the piece of paper by many others. No foundation has been laid as to its authenticity or as to any of the circumstances underlining its preparation. There is no circumstantial evidence of reliability. To the contrary, it would appear

to be a document prepared for the purpose of creating a litigation record. I respectfully object to the admission of this document.

MR. KNOPF: You are asking us to challenge the credibility of this document. On that basis I will ask my Committee to see whether they sustain your objections or not.

MR. HOLTZMAN: Before that, may I ask just a couple of questions of this witness, by way of testing the method of preparation of the document?

MR. LAVERY: A point of order, Mr. Chairman.

Well, I suppose it is a little informal, but can we go both ways at the same time?

MR. KNOPF: I don't mind Mr. Holtzman questioning him first strictly on this particular point.

Q BY MR. HOLTZMAN: Mr. Ellis, do you have the original of the document to which we are referring in front of you?

A It looks like it, yes.

Q And for the purposes of the record, I am referring to a document bearing the title Writers Guild of America picket report and the name near the top, Coles Trapnell.

A Right.

Q Referring to the first page of this document, Mr. Ellis, I invite your attention to what appears to be a signature in the lower right-hand corner; is that your signature?

A. Yes.

Q. And did you place your signature on the document at that location on or about April 2, 1973?

A. Yeah. Just as soon as I hung up the phone.

Q. Now, the five lines of handwritten material immediately above your signature in the lower right-hand corner, is that your handwriting?

A. Yes, it is.

Q. And did you write that at the same time?

A. Yes.

Q. Now, referring to the center part of the document commencing with the words "Called Trapnell". Is that your handwriting?

A. Yes.

Q. And to the first signature following those three lines, is that also your signature?

A. That is my signature, right.

Q. Now, referring to the printed material beginning with the word "Trapnell" in capital letters two lines immediately above the three to which I have referred, is that your handwriting?

A. No.

Q. Do you know whose handwriting that is?

A. No,I don't. I don't think it is mine. Let me put it that way. No, I don't think it's my handwriting.

Q. Referring to the words "Ben Joelson", J-o-e-l-s-o-n, and "Gene Boland" near the top of the

document, is that in your handwriting?

A. I really don't think so, but it could be. I don't recall. I don't think that is my handwriting, no.

Q. And if it is not your handwriting, would you know then who it was?

A. No.

Q. Referring to page 2 of the document and the hand-printed material there, is that your handwriting?

A. No. That is not my handwriting.

Q. Do you know whose it is?

A. Paddy Schweitzer's, I think.

Q. Do you know anything about the circumstances whereby this was placed on the document?

A. No, I don't. I think it's fairly evident that --

Q. Okay. You have answered the question.

A. No, I don't know.

MR. HOLTZMAN: Mr. Chairman, it would be our position that those portions of this document that the witness has been able to identify and authenticate, that is to say, the two portions which are in his handwriting, are properly admissible and properly to be considered by the Committee. We would not object to their introduction. As to the portions that were placed on there by persons unknown at the time or under circumstances unknown or by persons who have not been called to authenticate the handwriting, this portion could not be properly considered by the Committee, and we would object to all such material.

MR. KNOPF: Our feeling, and we have been discussing it while you have been talking, listening to you at the same time, is that we are entitled to see it, and, therefore, we accept it as Trial Committee's Exhibit No. 4 in its entirety, as was pointed out by Mr. Blankfort, keeping in mind the fact that there are some portions of this written by a party or parties unknown, with some specific attention being paid to Mr. Ellis's notes.

MR. HOLTZMAN: So that the record is entirely clear, there is one line on here that begins with the word "Trapnell" in large capital letters. The record is clear that we do not know who wrote it, and we do not known who is referred to, that is, who was the person who allegedly has seen Mr. Trapnell doing something. Material of this sort is highly inflammatory, highly prejudicial in circumstances such as these, and to permit such compound hearsay, the unauthenicated statements of unidentified persons, to come before this panel for any consideration whatsoever, we would submit, is not only prejudicial but contrary to the fundamental tenets of due process.

MR. KNOPF: I think you know from your past experience, particularly in the one case which we dismissed on your motion that hearsay evidence does not necessarily rule on your determination here, that if in fact the facts are not proven, we ask that they be proven.

I would also mark as Trial Committee's Exhibit

No. 5 the letter dated March 6, 1973 to Mr. Michael Franklin from Coles Trapnell.

I have heard your objection to No. 4. Do you have any objection to the admission of No. 5?

MR. HOLTZMAN: I'm not sure that I have seen a copy of it.

MR. KNOPF: I believe the letter came from you.

MR. LAVERY: It came from Mr. Susman.

MR. HOLTZMAN: Mr. Susman?

MR. SUSMAN: That is it.

MR. HOLTZMAN: We have a copy. We have no objection.

MR. KNOPF: Thank you. May we continue.

Mr. Mendonsa?

MR. MENDONSA: Well, I have no further questions.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: We have no further questions.

MR. KNOPF: Thank you very much. We usually ask that witnesses leave once they have testified. Thank you very much, sorry to keep you so long.

THE WITNESS: That's all right.

MR. MENDONSA: If I may have a moment to bring my next witness in, Mr. Alan Griffiths.

[A discussion was held off the record.]

MR. KNOPF: Back on the record, but before we continue, Mr. Lavery has a statement on behalf of the Committee.

MR. LAVERY: On behalf of the Committee, the motion

for -- let's see, it was for the exclusion of all, wasn't it? We rather agreed in spirit with the emphasis on the testimony as affirmed and reconfirmed by the last witness. That is, you had asked that the Committee not concern itself with matters on the memorandum that were not testified to by parties here present, wasn't that it?

MR. HOLTZMAN: Well, I think that my statement was a little bit stronger than that, Mr. Lavery. My statement was that the Committee should not consider matters placed upon this memorandum by persons other than the witness. He had identified two paragraphs as having been placed on there on April 2 by himself in his own handwriting. I have no objection as to those, but he also testified that the remaining matters on the memorandum, and specifically the first half of page 1 and all of page 2, were written by persons unknown to him at unknown times and under unknown circumstances.

MR. LAVERY: Well, if I speak correctly for the Committee -- and I hope that you will correct me if I am wrong -- our feeling is that the memorandum will be accepted into evidence, and the Committee will use its best judgment in separating the relevant and the irrelevant, but on this point also I think my brothers on the Committee would like it understood again for the benefit of the record that we are basically a fact-finding committee. We are not legal chessmen. We have to rule on motions, and we go through the dialog which is more familiar to the court than to a proceeding like this, but

we do it as a means to an end. We are a fact-finding committee trying to get to the facts, and if we spend less time on jurisdictional motions than we do on testimony itself, it is also because we have so many of those motions to pass on.

I am also authorized on behalf of the Committee to say that in our search for the facts it would certainly help if some of the respondents would appear here, so that we could talk with them personally. With all due respect to counsel, it is not satisfactory in getting at the heart of the matter, and it is in talking with the individual respondent himself.

MR. MENDONSA: At this point we would have called Alan Griffiths, the assistant executive director of the Guild. He has temporarily left his office. However, I will offer as a stipulation that if he were to be called in and testify, that he would testify that at my instruction he inspected his records to determine whether or not the passes have been issued since the beginning of the strike to Coles Trapnell, giving him permission to enter any struck premises; and that he would further testify that all such passes and all such requests would pass through his office; and that he would have such a record of any passes issued. I will offer that as a part of the stipulation.

If you want to offer your part as to what he would testify to on cross --

MR. HOLTZMAN: I would further offer to stipulate

that if Mr. Griffiths had been asked the question, "Could you under the rules then regulating your conduct have issued any such pass to Mr. Trapnell for the purpose of crossing a picket line at Universal Studios to perform services as a story consultant, you would testify that you would not have been authorized to issue any such pass?"

MR. MENDONSA: I would stipulate to that, with the one refinement, the rules governing his conduct, meaning the strike rules and the Rules of Conduct of Members during a Strike dated February 20th, 1973.

MR. HOLTZMAN: That is acceptable.

MR. MENDONSA: So stipulated.

MR. HOLTZMAN: So stipulated.

MR. KNOPF: Continue, please.

MR. MENDONSA: All right. I will at this point, again to cut down time, offer to incorporate into this record the testimony of Margaret Armen and the testimony of Robert Collins, picket captains at Universal Studios, with respect to the fact that there were picket lines at Universal Studios and the times and dates of the picket lines from March 6, 1973 through April 2 of 1973.

Rather than bring them in to again testify as to times there were picket lines at Universal, if we can incorporate the previous records with respect to their testimony on this subject, it would save time.

MR. HOLTZMAN: Mr. Chairman, I do not believe that I could accept any such stipulation on its face. I think

the Committee is entitled to an explanation of my position in that regard.

The previous testimony was lengthy. It was subject to cross-examination. It was subject to the testimony of other witnesses concerning what happened when it rained and the presence of picket lines at some times of the day and not at other times of the day, and it was not necessarily directed to the particular dates or times which were relevant to this case.

I do feel that it would be inappropriate to pick out the testimony of those two witnesses or relating to a different time and different circumstances, and to make it applicable here either with or without the cross-examination of the testimony of other witnesses pertaining to the same subjects. I think this respondent is entitled to direct testimony against him, and I must very sincerely and very respectfully decline to enter into the stipulation requested.

MR. MENDONSA: Well, I will ask that the Committee incorporate the testimony or take judicial notice of the facts, since we have had testimony in two prior cases from people who had prior and personal knowledge of the situation with respect to the picketing at Universal from the time of March 6 through, I believe, April 15th.

Now, at the request of Mr. Susman in one case, the record in a subsequent case was in fact incorporated into one of the prior cases after the record had been closed. It was the same testimony, that of Margaret Armen.

I again urge that the Committee take judicial notice then of the fact that there were pickets at Universal Studios from March 6th through April 2 every day, with the exception of a few hours on some days when there were one or a few gates not manned.

MR. HOLTZMAN: Mr. Chairman, I strongly, strenuously oppose the proposal that these other records be incorporated, and I even more strongly object to the request for judicial notice. In the first place, two members of this Committee have not heard the testimony to which counsel has adverted, nor have they heard the cross-examination or the testimony of the other witnesses on the subject. The facts are not as counsel has represented and would not be correct. There would be some considerable qualification with respect to days of the week, times of the day, holidays, and in particular the effect upon the picket line of the rainstorms during portions of the period.

Further, a lot of this doesn't even relate to the particular day which was pinpointed in these charges and in the offer of proof. I am afraid we are going to have to have some evidence on this, Mr. Chairman.

MR. LAVERY: Well, I have a two-part motion to offer, and I hope it doesn't sound like a speech.

Anyway,the essence of the motion is that this Committee accept the recommendation of counsel, Mr. Mendonsa, about the judicial notice of the extent of the picketing at Universal Studios over the period mentioned.

In connection with this, I would like to reinforce a purely personal observation, which I have made many times, that it seems to me that the existence of the picket line is not a children's game of who stepped on the red square or the black square. When a premises is struck, the picket line is a legal reality if there weren't one picket on it, and there are some cases to sustain this in this town, but I am not arguing at all. I am just explaining that the reason for my motion is that I am not concerned with whether it was raining at a certain hour or maybe some fellow in another case did or did not have an umbrella.

I simply state that trying to get at the facts and cut down the incidental detail, to concentrate on was the premise struck. There is a legal reality to a picket line that doesn't require 5,000 pickets. Well, anyway, I did make a speech, Mr. Chairman, but the essence of it is that we accept the recommendation of Mr. Mendonsa.

MR. KNOPF: We are going to caucus for a couple of moments, please.

[A discussion was held off the record.]

MR. KNOPF: Back on the record.

If I have this correctly, a motion has been made by Mr. Mendonsa that we take judicial knowledge that the picket line did in fact exist from the time of the calling of the strike, whether or not pickets in fact were parading back and forth in front of an entrance.

This is our determination and belief. What we are really interested in, Mr. Holtzman, is did a member of this Guild go to work for a non-struck company, for a struck company, if he entered the premise of a struck company, and at that particular moment and time no picket happened to be standing in front of a place of entry, that has nothing to with whether or not he violated a strike order.

I think now and certainly in the future we will not recognize that as a legitimate motion for dismissal.

MR. HOLTZMAN: All I can state in response to this, Mr. Chairman, is, number one, the specification of the charge which has been presented to Mr. Trapnell indicates very specifically, and I quote:

> "You are charged with having crossed a Guild picket line at Universal City Studios, Inc. on or about March 12 and April 2, 1973."

MR. KNOPF: That is what we are trying to determine.

MR. HOLTZMAN: Now, it seems to me that an indispensable element of proof of the case, proof which must be established by the charging party before this Committee by competent evidence, is that there was a picket line at that time and place and that the individual crossed that picket line.

Now, I urge the Committee to consider very, very seriously whether it is going to permit that burden of proof to be met by the existence of some metaphysical

picket line which must necessarily exist whether pickets are physically there or not, whether that burden is to be met by the suggestion that at some time of day on some days during a period a picket line was present. Let this Committee not forget that it is considering the imposition of penal sanctions upon a member, fine, suspension, expulsion, or perhaps other sanctions. It seems to me that the charge that is to be made has got to be a realistic one. The charge has got to be proved with evidence of such character so that this man must be shown not only to have done the acts which are charged but to have known what he was doing at the time. For example, if there was nothing there but a metaphysical picket line, to use Mr. Lavery' s term --

MR. LAVERY: I thought you had mentioned that first. How could this man know he was doing something wrong when he was crossing a line? It seems to me that the Guild must preserve facts.

MR. KNOPF: The Guild must only prove, and they must prove it that he went to work for a struck company, that he entered the premise of a struck company. I have said before, and I will say it and this will end it. It is the position of this Committee that if a strike has been called against a company, a line has been established, and that line will remain established in fact until it is called off. Whether or not an individual picket was or was not parading back and forth at that particular time when someone chose to enter is not something we are

going to worry ourselves with at this point.

MR. HOLTZMAN: I respectfully submit to the Committee that if this is its feeling, it is deviating from the specification on the charge which has been asserted against Mr. Trapnell.

MR. KNOPF: The Committee does not feel that it is deviating from it.

MR. MENDONSA: It is also in violation with Section 13, which has no mention of having crossed a picket line as simply for entering the premise of a struck producer without having obtained a pass. That is for the Rules of Conduct during a Strike.

MR. HOLTZMAN: I might suggest to the Committee that the reference to Section 13 does not bear out the instruction which counsel has attempted to place upon it. Section 13 refers to a prohibition against entering the premises of a struck producer for a variety of specific purposes, such as discussion of the sale of material or contract of employment, viewing films, et cetera.

None of these have been suggested in this instance, either by the specific charge or by the evidence. Section 13 really appears to have little to do with this case at this stage of the record.

MR. MENDONSA: Let me point something out. Counsel hasn't read the full section. The last sentence says:

> "Should a member find it necessary to visit the premises of a struck producer for any reason apart from the

foregoing, he should inform the Guild in advance of the nature of such a visit."

That is the reason for a pass.

MR. HOLTZMAN: Mr. Chairman, what is it they were trying to charge Mr. Trapnell with? Are they trying to charge him with performing services or not informing him of the purpose of the visit? It appears that we don't have the evidence to prove that.

MR. SUSMAN: Another point I may add is that his letter informs the Guild in advance of the purpose of his going on the premises, so I think he is in complete compliance on the basis of that letter which is in evidence with Strike Rule 13, which was written at the inception of the strike.

MR. LAVERY: Mr. Chairman, I think that our varying attitudes are self-evident by now. Can't we proceed?

MR. KNOPF: I will ask that we proceed.

MR. MENDONSA: At this point I would like to introduce into evidence as Guild Exhibit 1 the work record for Coles Trapnell.

It is a one-page document.

MR. HOLTZMAN: For the record counsel has handed me a copy of the document to which he has referred and also has handed one to the reporter.

MR. MENDONSA: Can we stipulate that this is a work record kept in the normal course of business of the Guild?

MR. RITTENBERG: So stipulated.

MR. HOLTZMAN: So stipulated.

MR. MENDONSA: With that, I would offer it into evidence.

Also at this time, I would like to introduce as Guild Exhibit No. 2 the work record for Coles Trapnell and the dues record for Mr. Trapnell. May we stipulate that this is a business record kept in the normal course of business?

MR. HOLTZMAN: So stipulated.

MR. MENDONSA: With that, I will offer it into evidence.

MR. KNOPF: Having no objections --

MR. SUSMAN: One question, Mr. Mendonsa.

The upper right-hand corner has a notation which says "Acc-Assoc. 6/7/54." What does the "Acc" mean?

MR. MENDONSA: Accepted.

MR. SUSMAN: I see.

MR. MILLER: Accepted?

MR. MENDONSA: Accepted. I guess that means accepted as an associate member in June of 1954.

MR. HOLTZMAN: Well, the record is clear in any event that his capacity has never been other than that of associate member; is that correct?

MR. MENDONSA: No. In July of 1955 he became an active member. Referring to page 3, the upper right-hand corner, he became active in television.

MR. HOLTZMAN: And his present status is in what?

I refer to page -- I see reference to the fact that he was inactive on March 19, 1965.

MR. MENDONSA: His current status may be reflected on the second to last page. As of January 1973 he was a non-current member. Actually he has been in the same status since March of 1965. He was an inactive member at that time.

MR. HOLTZMAN: So he became an inactive member in March of 1965, and the designation of his category was changed to non-current in January of 1973.

MR. MENDONSA: That's correct.

MR. SUSMAN: I would like to ask a question. I don't see any reference to inactive members in the Constitution and Bylaws. I don't know what they are, unless I have missed something.

MR. MENDONSA: That was a designation made for that person who was once active and then became inactive. It is the same category that is now referred to as non-current. It was just a designation change in the current Constitution.

MR. KNOPF: Mr. Miller?

MR. MILLER: I was just going to inquire of Mr. Mendonsa whether or not that was a change by virtue of a new Constitution.

MR. MENDONSA: That's correct.

MR. MILLER: Was Mr. Trapnell activated by the Guild?

MR. MENDONSA: He was --

MR. MILLER: On or about the 18th of January?

MR. MENDONSA: No, he was not. He was non-current. He remains non-current today.

MR. MILLER: That is merely another word for inactive?

MR. MENDONSA: It is a designation indicating that he is a member of the Guild, at one time had sufficient credits to be considered an active or a current member of the Guild, and has now failed to maintain the required number of units of credit to maintain his status as a current or active member, so he has now become a non-current member of the Guild.

MR. KNOPF: What Mr. Miller is asking is why on January 18th was he designated non-current.

MR. MENDONSA: Because that is the effective date of the new Constitution. [illegible] is a change in name. Actually, the prior Constitution referred to the non-current member as a non-Guild member. It was called Guild and non-Guild, and it is now called current and non-current.

MR. KNOPF: Were all inactive members made non-current as of January 18, 1973?

MR. MENDONSA: The designation was changed for inactive.

MR. KNOPF: This designation was changed for all?

MR. MENDONSA: They were not made inactive. They were simply given the new designation.

MR. KNOPF: All right. Thank you. Any questions of the exhibits, Mr. Holtzman?

MR. HOLTZMAN: We have no questions, Mr. Chairman.

We would simply invite the Committee's attention to the Guild Exhibit 1, which demonstrates that the vast bulk of Mr. Trapnell's credits relate to the year 1959, with three credits in 1961, one in 1962, two in 1965, and none since that time. This appears to be corroborated by the member's work record which forms portions of Guild Exhibit No. 2. The point to be made simply is that documentary evidence furnished by the Guild appears to be fully corroborative of Trial Committee's Exhibit No. 5, Mr. Trapnell's letter to Mr. Franklin of March 6, 1973, wherein he stated that for exactly six years he has been employed in his present capacity, and at no time during that period has he performed writing services.

MR. KNOPF: Could I ask a question? How long have you known Mr. Trapnell, Mr. Holtzman?

MR. HOLTZMAN: I don't believe I can answer that question.

MR. KNOPF: Well, I am curious to know. You seem to know a good deal about his affairs. Do you know of what efforts over those last six years he has made perhaps to resign from the Writers Guild?

MR. HOLTZMAN: I am afraid I must respectfully decline to answer the question, Mr. Chairman.

MR. KNOPF: Mr. Mendonsa, has he made any attempt to resign from the Writers Guild?

MR. MENDONSA: There is no record that I am aware of, and there is no indication that he has attempted to resign.

MR. KNOPF: Am I right that he has maintained his

membership in the Guild over the last several years, although apparently he has done no writing?

MR. MENDONSA: That's correct. He has paid his dues every quarter.

MR. KNOPF: Do you have any idea why he chose to do so?

MR. MENDONSA: I have no idea.

MR. KNOPF: Do you, Mr. Holtzman?

MR. HOLTZMAN: I have no information on the subject, Mr. Chairman.

MR. KNOPF: Any questions?

MR. MILLER: Mr. Chairman, I really think I should ask Mr. Mendonsa, and it may be my own inability to read. In your prior Constitution I find no inactive status.

MR. MENDONSA: You will find -- and I already mentioned it on the record. I said in the prior Constitution it was referred to as Guild and non-Guild. This is a classification in membership. It was a search for better words.

MR. KNOPF: It is like going to the unemployment office, to the Office of Human Resources.

MR. HOLTZMAN: In response to the question that the Chairman put to me just a moment ago, I think it would be appropriate to invite the Committee's attention to Rule 27 of the Rules for the Conduct of Members during a Strike dated February 20, 1973, which provides among other things, and I quote:

> "Membership in any Guild or union is not a voluntary association of parties but

but a binding contract between them, which cannot be abrogated unilaterally by either party except under provisions of the Guild's Constitution or state or federal law."

I think that in --

MR. KNOPF: I respect what you are saying, Mr. Holtzman.

MR. MENDONSA: Well, I don't know what the relevancy of this is. I don't understand.

MR. HOLTZMAN: Well, since the Chairman has inquired of our knowledge of circumstances pertaining to any efforts by Mr. Trapnell to resign, I think it is appropriate to place before the Committee the fact that the Rules for the Conduct of Members appear to preclude the possibility of unilateral termination of membership.

MR. MENDONSA: Well, I think that applies in the face of the Constitution, which gave the right to resign.

MR. HOLTZMAN: Do you refer to a particular section on that?

MR. MILLER: That is subject to two years.

MR. MENDONSA: That's correct. The Board of Directors cannot deny resignation after a period of two years, after a period of two years after request.

MR. KNOPF: Do you have anything further, Mr. Mendonsa?

MR. MENDONSA: Well, wait a minute. There was a request for the citation. I will have to find it.

MR. HOLTZMAN: I will withdraw the request, Mr. Mendonsa. I am sure we can find it.

MR. KNOPF: Anything further to present in the case?

MR. MENDONSA: The only thing is I would request, as we have in prior records, that we incorporate the Guild's strike orders of March 5, 1973 and Rules for the Conduct of Members dated March 20, 1973 and the Constitution and Bylaws of the Writers Guild of America, West, Inc. effective on January 18th, 1973.

MR. HOLTZMAN: That will be satisfactory.

MR. KNOPF: Fine. They are received. Presentation for the respondent, Mr. Holtzman?

MR. HOLTZMAN: Has the Guild rested?

MR. MENDONSA: Yes.

MR. HOLTZMAN: Mr. Chairman, I respectfully move to dismiss the charges against Mr. Trapnell on the ground and for the reason that there has been a failure of proof. In that regard, we base our motions specifically upon each and all of the grounds which I asserted in my motions and objections at the commencement of this proceeding, simply to incorporate those by reference without setting them forth in full.

I also respectfully submit that there has simply been no proof whatsoever that Mr. Trapnell crossed a Guild picket line at Universal City Studios, Inc. on or about March 12, 1973 or on or about April 2, 1973 or at any other time for the purpose of rendering services for Universal City Studios, Inc. There has been no

evidence that a picket line was established on either day, other than what I would regard as questionable judicial notice of matters which are not facts of common knowledge, and which indeed are subject to serious question.

There has been no direct evidence that he crossed a picket line. There has been no evidence concerning performance of services. and in particular we have for the Committee the unimpeached, uncontradicted statement of Mr. Trapnell, which is evidence that at no time during the last six years has he performed writing services. We therefore have a situation where by speculation and no solid evidence the man is accused specifically of crossing the picket line, and we have a clear-cut case which would indicate that even if this were the case, it was not for the purpose of performing services, having no relationship to any matter within the jurisdiction of this Guild.

I respectfully submit then that the charges should be dismissed for the failure of proof of anything falling within the Guild's jurisdiction.

MR. KNOPF: We deny your request for a dismissal, Mr. Holtzman.

MR. HOLTZMAN: Mr. Chairman, the evidence on behalf of Mr. Trapnell, in addition to the letter which is already Trial Committee's Exhibit No. 5, will be presented by Mr. Susman.

MR. SUSMAN: Mr. Shane?

ARNOLD SHANE

called as a witness on behalf of the Respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q. Will you state your name for the record?

A. Arnold Shane.

Q. And you are employed at Universal City Studios?

A. Yes, I am.

Q. Briefly, what is the nature of your employment?

A. I am a business affairs executive for television at Universal Television.

Q. You have been for a number of years?

A. Yes, I have.

Q. You have seen the letter of March 6, 1973 written by Mr. Trapnell?

A. Yes.

Q. To your knowledge, do the facts set forth therein regard the nature of his activities at Universal?

A. Yes. They were as of the dates of this letter.

Q. Without repeating the content of the letter, am I correct that Mr. Trapnell performs no writing services at the studio?

A. That's correct.

Q. His activity basically was devoted to the

determination of what material crosses through the story department in television was susceptible to be purchased by Universal; is that correct?

A. Yes.

Q. Now, you mentioned that as of the date in the letter the statement is correct. Since that date has there been a change in his activities?

A. Yes, there has. Starting last week, he was placed in charge of the overall studio story department for both features and television.

Q. What does that encompass?

A. It encompasses reading material and recommending the purchase for production of the material for both features and television. It also encompasses the supervision of all of the studio story analysts who write the synopses of material that comes into the studio.

Q. And is he considered an executive at the studio?

A. Yes, he is.

MR. SUSMAN: No further questions.

MR. KNOPF: Mr. Mendonsa?

MR. MENDONSA: Yes.

EXAMINATION

BY MR. MENDONSA:

Q. Are you familiar with his personal service contract, Mr. Trapnell's personal service contract with Universal?

A Yes, I am.

Q And does that contract give the company the right to require him to perform writing services?

A Yes.

Q And did it on March 6th of 1973?

A Yes.

Q And does it today? Since his change, I take it, he has a new contract with Universal?

A He has the same written contract.

MR. MENDONSA: I have no further questions.

EXAMINATION

BY MR. SUSMAN:

Q Has Universal ever called upon him to perform any writing services?

A No, they have not.

MR. SUSMAN: No further questions.

EXAMINATION

BY MR. BLANKFORT:

Q In doing his duty, as you described, does he have the occasion of discussing story or stories with producers at Universal or with the writers whose stories may be considered and so on?

A No, he does not have any contact with writers. His contact basically is with agents who submit the materials, plus the company executives who supervise the producers.

MR. LAVERY: Could I ask a question?

After you, Mr. White.

EXAMINATION

BY MR. WHITE:

Q Is he now, or has he been in the past six years, a member of the Story Analysts Guild or just of the Writers Guild?

A No, he has not been a member of the Story Analysts Guild. He does not do synopses. He only reads and recommends material and supervises the story analysts.

EXAMINATION

BY MR. LAVERY:

Q Well, Mr. Shane, in dealing with the story analysts, what kind of story decisions does Mr. Trapnell make? Are these recommendations for productions for consideration?

A He makes recommendations to the executives as to the feasibility of a particular literary material when he feels that it is suitable for the kind of productions that the company has been involved in.

Q And is that his personal and professional literary judgment? I mean, that is his own individual personal judgment, not that of a committee under him?

A No. The judgments are his.

MR. LAVERY: Thank you.

MR. KNOPF: Any further questions?

MR. MENDONSA: I have a few.

EXAMINATION

BY MR. MENDONSA:

Q Where does Mr. Trapnell perform his services?

A At Universal Studios.

Q And was he working at Universal Studios from the period of March 6 to April 2 of 1973?

A Would you please repeat that question.

[The reporter read back the question.]

THE WITNESS: I'm not sure. I'm a little confused. Are you asking whether he was working at or for the studio?

Q BY MR. MENDONSA: Well, let me rephrase it. Was he working at the studio then between the period of March 6 to April 2 of 1973?

A As of that time he was, yes.

Q And was he also working some of the time somewhere else than for Universal?

A I don't know whether he was rendering any services off the lot. There were some periods of time that I do know he was not at the studio.

Q Could you give me some idea of how much time he was not at the studio during that period?

A No, I can't. Part of the time his office was being moved, and there was no office for him, so he could not come to the studio. But I don't see him every day, and I can't honestly say how long he was at or not at the

studio.

Q. Does he have an exclusive contract with Universal?

A. Yes.

Q. You yourself were working at Universal during that period of time; is that correct?

A. Yes.

Q. And you observed picket lines at Universal during that period of time?

A. Some of the time, yes.

Q. There were some times that you did not see a line at Universal?

A. That's correct.

Q. Approximately how many days would you say that there were during that period from March 6, 1973 through April 2 of 1973 that you observed that there were no lines at Universal?

A. I recall at least three occasions where there were no pickets in front of the studio. Now, I'm talking about the work hours up till 6:00 o'clock. There were never any pickets after 6:00 o'clock.

Q. So are you saying that there were no pickets at any gate during the three times that you observed no pickets?

A. Those three occasions I remember there were no pickets at any of the gates along Lankershim Boulevard.

Q. And were those days when it was raining?

A. Either one or two of them, yes. I remember at

least one occasion when it was not raining, and there were no pickets there.

Q Approximately what time of day was that?

A That it was not raining?

Q No. At the time that it was not raining that you saw there were no pickets?

A I really couldn't remember, but it was during the regular business hours. It was prior to 6:00 o'clock.

Q And on that occasion, did you observe pickets at Universal at any time during that day?

A I believe I did, yes.

Q Now, on the other two days, did you observe pickets at any time during either of those two days or both of those two days?

A No, I didn't.

Q You mean there were two days when you observed no pickets at all at Universal any time during the day?

A That's correct.

Q And approximately when was that? At the very beginning of the strike or --

A The first time was right at the beginning, oh, the second or third day, I would say. The other time, I would say, was, oh, perhaps a week to two weeks after the beginning of the strike.

Q Now, directing your attention to that period, April 1 and April 2, do you recall what time of the day the pickets were there at Universal?

A Could you repeat the question?

Q During that period, just right around April 2 or April 1, you say there were pickets at Universal. Can you give us the time of the day that you would have observed pickets at Universal?

A Well, generally, I would observe them as I came in in the morning.

Q What time would that have been?

A Between 9:00 and 9:30.

Q And when else?

A And during the lunch hour and occasionally when I would happen to look out the window.

Q Which might have been any time of the day?

A Yes.

MR. MENDONSA: I have no further questions.

MR. KNOPF: Any questions? Thank you very much.

Again, I think there are no further questions.

MR. HOLTZMAN: We have nothing further. The defense rests.

MR. KNOPF: I will ask for closing arguments. Mr. Mendonsa?

MR. MENDONSA: Just very briefly, we think we have established that Mr. Trapnell did cross the line. We have the testimony of the witness that he made a telephone call from Universal. The witness made a telephone call prior to that and was told that the message would be given to Mr. Trapnell. Mr. Trapnell did in fact call back. He has indicated by his own letter dated March 6, 1973 that he did intend to continue to work for Universal. The

fact of the matter is he was working at the studios at Universal. The facts are that there were picket lines there every day with the possible exception of two days, one of those being in the first few days of the strike, and another time was in the second week of the strike. It seems clear then that around the period of April 2, there were picket lines there from at least 9:00 or 9:30 until 6:00 p.m. every day.

I think it is the logical assumption that can be made that the circumstances dictate that in this case the conclusion be made that Mr. Trapnell did cross a picket line at Universal City Studios on or about April 2 of 1973 for the purposes of rendering services for Universal Studios, the company that was in fact on the Guild Strike List at that time.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Mr. Chairman, just a couple of quick comments.

First, we respectfully submit that the charges should be dismissed for each and all of the reason and each and all of the grounds that were stated at the outset of this hearing. I will not repeat these, but I would respectfully request that it be incorporated into the record at this point.

Secondly, we submit that the entire case against Mr. Trapnell consists of the weakest sort of inference, innuendo, and speculation. Although counsel has suggested that this is a matter of necessity in his

inference that Mr. Trapnell crossed a picket line, we submit that this isn't the case at all. We submitted evidence that there were three occasions that the witness, Mr. Shane, could specifically recall where there was no picket line, at least during a substantial portion of the day.

The evidence has been with respect to the month of April, generally, that no picket lines were maintained before 9:00 a.m. or after -- I can't recall whether it was 5:00 or 6:00 p.m. -- but one of those two specific times. In any event, a person arriving before 9:00 a.m. would enter the premises without crossing the picket line, the pickets not having arrived until after that.

If the Chairman will recall, there was evidence that during the month of March pickets reported earlier, but after the end of March only at 9:00 o'clock. There has been no direct evidence whatever that this man did the act which he is specifically accused of having done, namely, having crossed a picket line to enter the premises at Universal City Studios, Inc. for the purpose of rendering services for that company.

Further, the record establishes without contradiction that if he performed any services at all they were not services of a writing character. He has no credits for writing since 1965. He is employed in the capacity which precludes writing activities. There is direct evidence that he does no writing. The records in this regard corroborate the testimony, and the testimony

corroborates the records.

We respectfully suggest that the decision of the Committee must necessarily be that the specification has not been proven. The charges must be dismissed.

MR. KNOPF: Any questions?

This matter will be taken under submission by this Trial Committee. After this Committee has deliberated it will submit its written recommendation as to guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors who, under the Guild's Constitution and Bylaws, have the authority to either accept, reject, or modify this Committee's recommendation.

In order for this Committee to make a recommendation of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the respondent be acquitted of the charges.

There being nothing further, this hearing is adjourned.

[The documents previously described were marked by the notary public as Trial Committee's Exhibits 1, 2, 3 and 4 and Guild Exhibit 1 and 2, inclusive, respectively, for identification and are attached hereto.]

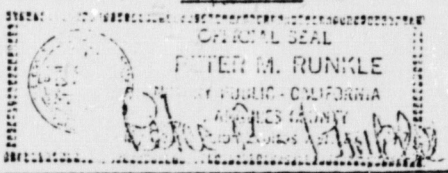
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, PETER M. RUNKLE, Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

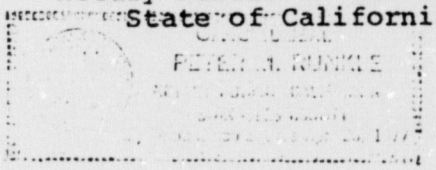
That the foregoing Intraunion Disciplinary Hearing in the Matter of Writers Guild of America, West, Inc. versus Coles Trapnell was taken before me at the time and place herein set forth and was taken down by me in shorthand thereafter transcribed into typewriting under my direction and supervision;

That the foregoing 80 pages contain a true and correct transcription of my shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 12th day of June, 1973.



Notary Public in and for the
State of California



UNIVERSAL CITY STUDIOS, INC. AN MCA INC. COMPANY

March 6, 1973

Mr. Michael Franklin
Writers Guild of America West
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

I must respectfully decline to quit my job at this studio as a result of the writers strike call.

I am employed in a supervisory (and advisory) capacity as an executive consultant and I perform no writing services whatever. My duties consist of evaluating and recommending literary material and I have no professional contact with motion picture or television writers. For exactly six years I have been employed in this capacity and at no time during that period have I performed writing services.

I have had no screen or television credits of any kind for more than seven years (since 1965). I have participated in no pension or other Guild benefits, and during my six years' contractual employment at Universal I have been an inactive Guild member, in effect a courtesy member.

Furthermore, I have been formally notified by Universal Studio at the highest executive level that I am expected to fulfill my contractual duties as advisor and consultant and that failure to do so will result in the Studio resorting to legal rights and remedies.

Sincerely yours,

COLES TRAPNELL
Story Consultant

Trial Committee's Exhibit 5
P.M.P.
N.P.

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

5e/16 81.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

and

ROBERT BLEES,

Respondent.

No._____.

HEARING OF ROBERT BLEES

Los Angeles, California

May 31, 1973

Reported by:

PETER M. RUNKLE

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.)
)
and)
)
ROBERT BLEES,)
)
Respondent.)

Hearing of ROBERT BLEES, heard before Emmet Lavery, Chairman, on behalf of Writers Guild of America, West, Inc., at 8955 Beverly Boulevard, Los Angeles, California, commencing at 2:30 P.M., Thursday, May 31, 1973, before Peter M. Runkle, Notary Public.

APPEARANCES:

FOR WRITERS GUILD OF AMERICA, WEST, INC.:

JOHN A. MENDONSA
Resident Counsel, WGA
8955 Beverly Boulevard
Los Angeles, California 90048

FOR RESPONDENT:

MUSICK, PEELER & GARRETT
BY: LARRY A. CURTIS and WILLIAM J. EMANUEL
1 Wilshire Boulevard
Los Angeles, California 90017

BEFORE:

Emmet Lavery, Chairman
Irma Kalish
James Poe
Nate Monaster
Barry Oringer

I N D E X

W I T N E S S:

CAREY WILBER

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GENE LEVITT

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One-page letter dated May 16, 1973 to John Mendonsa from Larry Curtis 28

Trial Committee's Exhibit 7
One-page letter dated May 16, 1973 to Larry Curtis from John Mendonsa 29

Guild's Exhibit 1
Writers Credit Record for Rober Blees 61

Guild's Exhibit 2
Writers Credit Record for "Olney Sherwood" 62

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INFORMATION REQUESTED:

(None)

MR. LAVERY: This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. Robert Blees.

This matter is being heard before a Trial Committee duly convened pursuant to Article X of the constitution and by-laws of the Writers Guild of America, West, Inc.

The members of the Trial Committee are James Poe, Nate Monaster, Barry Oringer, Irma Kalish, and Emmet Lavery, Chairman.

Will the parties please state their appearances for the record. For the Guild?

MR. MENDONSA: John A. Mendonsa.

MR. LAVERY: For the Respondent?

MR. CURTIS: Larry A. Curtis and the partner in charge of our Labor Department, William J. Emanuel of Musick, Peeler & Garrett for the Respondent Robert Blees.

MR. LAVERY: Are there any other appearances to be made in this matter? Let the record show no response.

I have a copy of the charges and a cover letter sent by certified mail to the Respondent on April 6, 1973 with a signed return receipt attached. I have marked these as Trial Committee's Exhibit No. 1. Is there any objection to the receipt in evidence of Trial Committee's Exhibit No. 1?

MR. CURTIS: I think prior to any stipulation or lack of objection to the receipt in evidence, there would be certain preliminary motions that we would like to have heard by the Trial Committee, since I assume the presentation of

evidence, including the letter and the charges, would come as part of the Guild's case in chief, as opposed to any preliminary motion matters.

MR. LAVERY: Mr. Mendonsa, how do you feel about that?

MR. MENDONSA: I have no problem.

MR. POE: This Committee has heard those motions many times, so we beg you to precis them as best you can.

MR. CURTIS: I think I --

MR. POE: Also, would you please give a number to each motion for purposes of reference?

MR. CURTIS: I think I can assure the Committee that the motions will hopefully be made in an expeditious and concise fashion.

MR. POE: The standard record as of this hearing is 25 minutes.

MR. LAVERY: For 12 motions.

MR. POE: For 12 motions.

MR. LAVERY: All right, you're on.

MR. CURTIS: Initially, we have one motion that we did not anticipate, and that would be to dismiss the hearing on the grounds that we were not provided with information in advance that Irma Kalish and Barry Oringer would be members of this Trial Committee. At a past point in time, the Guild was sent a letter requesting information concerning the identity of members on the Trial Committee. As you are aware, the Guild's Constitution requires that five members be appointed as a Trial Committee. At that time we were supplied eight names, three of whom are present at this

hearing. Two of the individuals present on the Trial Committee at this hearing are not on that list of eight that were supplied to the Respondents. For that reason, we would urge upon the Committee that the ability of the Respondent and the Respondent's counsel to prepare in terms of investigation of any possible bias, prejudice, background, investigation, or any possible grounds for objection as to the Constitution of the Committee on the grounds, for one thing, that under Article 10 the interests of members of the Committee might be other than those of members of the Guild in general; and also simply the general grounds of an inability to prepare to meet the charges, we would ask that it be dismissed.

MR. LAVERY: Counsel, would you like a ruling on those motions as we go?

MR. CURTIS: We would appreciate rulings in a seriatim fashion, yes, sir.

MR. LAVERY: That is one by one?

MR. CURTIS: Yes, sir, and that would be number one.

MR. LAVERY: The motion is denied. I might just say as a footnote that this is not arguing with counsel. It has been the continuing opinion of the panel that our Constitution, like other constitutions, is one of implied powers and delegated powers. The inherent right and desirability of a panel to be enlarged and to continue is an advantage to all Respondents. If it were limited to five and seven men, we'd be here for two years of Christmases. This motion number one is denied.

MR. CURTIS: Secondly, number two motion. The Respondent would request at this point clarification of the charges. This again is a motion that has been heard by a trial committee of the Guild before. Specifically in National Labor Relations Board Cases Nos. 31 CB-1203-2 and 31 CB-1223, counsel for the Writers Guild of America has previously stated on the record by way of an affirmative allegation that disciplinary proceedings are being brought against hyphenate members of this Guild, only for the reason that it is alleged that those hyphenate members crossed picket lines and performed writing services after crossing those picket lines. We would ask for clarification and move either for dismissal or continuance of the hearing for failure to clarify, or, if such failure is forthcoming, we would ask for clarification of the charges with respect to the allegation that writing services may or may not have been performed after crossing the picket lines.

MR. MENDONSA: May I respond to this?

MR. LAVERY: Yes, John.

MR. MENDONSA: The answer in the National Labor Relations Board hearing was that neither the complaint that was issued by the National Labor Relations Board nor the answer that was filed by the Guild was sent to Robert Blees. The only document that was sent to Robert Blees was in fact the charges which have charged him with having crossed the picket line to render services, not specifically writing services. The answer that was filed by the Guild in the National Labor Relations Board hearing was amended to include services of

any kind and to delete that portion of the answer which would have stated that the threats or alleged threats were made only to persons who were going across the line to render writing services.

In any event, the charges that were served upon the Respondent are no different today than they were on the day they were served. The Respondent has not been denied due process by not having ample time to prepare his case. As for a clarification, the clarification, I think, has been given.

MR. LAVERY: Counsel, the ruling of the Committee is, unless the Committee has some objection, that this motion in similar hearings has been denied, and it is denied by this Committee.

MR. POE: Counsel, at this point, I would like to ask for the introduction of the exhibit concerning the charges, because I don't know the exact charges, and they are being referred to by the representatives of Mr. Blees.

MR. LAVERY: We started on the motions, because counsel asked that. Ordinarily we would have introduced the charges first.

MR. POE: Well, I have interrupted the sequence before for the same reason.

MR. CURTIS: We would have no objection if the letter of two pages constituting the charges were at this point marked for identification, as opposed to being introduced as an exhibit.

MR. MENDONSA: Let's do it that way. These are going to

be Trial Committee Exhibits.

MR. POE: These would be 1.

MR. LAVERY: For identification.

MR. MENDONSA: These are copies, one for the reporter and one for counsel for the Respondent.

MR. LAVERY: And what about Two, John?

MR. POE: Page 2 is part of One.

MR. MENDONSA: Well, the charges are set forth in the Trial Committee Exhibit 1 for identification, unless you want to go into others. The others are requests for information, requests for extensions of time, the granting of the requests and --

MR. POE: No. Just the charges.

MR. MENDONSA: The charges are embodied in Trial Committee Exhibit 1.

MR. LAVERY: Would you like to proceed with the third motion?

MR. CURTIS: Yes, sir. The third motion, as to my understanding, has been requested before. We would request at this time a copy of the charges initially filed with the Executive Director of the Guild, pursuant to the Guild's Constitution and By-Laws to have an opportunity to examine these charges to determine whether or not they conform to the charges served upon the Respondent Robert Blees.

MR. MENDONSA: I believe again that the Trial Committee or a greater portion of the Trial Committee has at least heard the arguments on both sides before, but for the record, since we do have new counsel here, let me state our arguments in

opposition.

The Constitution is subject to interpretation by the Board of Directors and only the Board of Directors. Reading Sections 1 and 5 of Article 10 of the Constitution, it would appear to indicate that there is an actual physical charge that comes from the Board of Directors to the Executive Director. It is, however, a matter of interpretation, I believe, as to whether or not a copy of that actual document must be served upon the Respondent. The fact of the matter is, I have made the representations in the prior hearings, and I will make it again here, that the charges that were served upon Mr. Blees are an actual representation of the charges that emanated with the Board of Directors. He was not denied due process of law by his failure to be advised of the charges that are being preferred against them. Well, I think that is as far as this motion goes.

MR. LAVERY: The ruling of the Committee is that the motion is denied.

MR. CURTIS: In conjunction with that, we would also request, as has been requested in correspondence previously, that the identity of the individual or individuals filing and preferring the charges be revealed for purposes of preparing the defense.

MR. LAVERY: Is that a separate motion?

MR. CURTIS: That, I think, may be denominated as a separate motion.

MR. POE: That would be No. 4?

MR. CURTIS: That would be No. 4.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. For a matter of clarification then, the charges that were preferred in this case were brought from the Board of Directors of the Writers Guild of America, West, Inc. to the Executive Director.

MR. LAVERY: As a matter of appropriate procedure, the motion is denied.

MR. CURTIS: We would also request at this point as the No. 5 motion, if you will, that Respondent be supplied as has been previously requested with the identity of the complaining witness or witnesses whom the Guild relies upon for its allegations that the picket line was crossed on March 6, 1973.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. These witnesses, as was stated in a reply letter, the request for the names of the witnesses, which was first made in this case by Respondent's representatives at that time, Richard N. Fisher, F-i-s-h-e-r, of O'Melveny & Myers, by letter dated April 23, 1973. By reply letter to Mr. Fisher from me, dated April 27, 1973, I advised Mr. Fisher that we were declining to supply the names of the witnesses who would testify in support of the charges.

It was at that time advised that we knew of no provision in law nor the Constitution and By-Laws of this Guild that would require us to divulge the names of those witnesses. He was also advised, however, that under the due process of law and that under the Guild's Constitution and

By-Laws that they would be given an opportunity to confront the witnesses at this hearing and to cross-examine them. They will be given an opportunity.

MR. LAVERY: Unless there is some objection from the Committee, the motion is denied.

MR. CURTIS: The No. 6 motion is a motion by the Respondent to dismiss on the grounds that the Trial Committee lacks jurisdiction to discipline a producer-writer hyphenate member of the Guild, for actions performed by him solely in his capacity as a supervisor under Section 8(b) of the Taft-Hartley Act. Specifically with respect to this Respondent, he is an executive story consultant and was responsible for the effective recommendation of the hiring of writers and for participation in management decisions involving budgets, locations, production, and for the making of effective recommendations in those areas. We would therefore urge upon the Committee, as obviously has been done before, that there is no jurisdiction and no right to discipline a person for functions performed other than their functions as a writer.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. The issue, as was raised in this motion, is now being tried before the National Labor Relations Board. No decision has been made by the National Labor Relations Board or any court of competent jurisdiction. It is the Guild's contention, and it always has been, that this Guild can discipline its members, whether they are supervisors or not. There is, I remind you, no evidence

before this Committee now that would indicate that Mr. Blees is in fact a supervisor within the meaning of the National Labor Relations Board Act. Even if he were proven to be a supervisor within the meaning of the National Labor Relations Act, it is a question of whether or not, under the current ruling of the National Labor Relations Board, this union in disciplining its supervisory personnel would be in violation of Section 8(b) of the National Labor Relations Act.

In any event, there is no law that can be pointed to right now that would be determinative of this matter, inasmuch as the courts would seem to have now disagreed with the rulings of the National Labor Relations Board rulings, which have only been coming down from the Board in the last two years, and I point specifically to a decision of the Ninth Circuit, which is that the Federal Courts have ruled this jurisdiction that overturned the Board's decision in a case involving a union disciplining supervisors for having crossed the picket line. They have in fact supported the Guild's position. We are of the opinion that this Committee does have jurisdiction in this matter, even if Mr. Blees is proved to be a supervisor or not.

MR. LAVERY: In this, as in other hearings, it is the opinion of the Committee that it does have jurisdiction. The motion is denied.

MR. CURTIS: The No. 7 motion, if you will, is a motion to dismiss again for lack of jurisdiction, because any work performed outside of writing is not within either the certification or the scope of recognition of the Writers

Guild of America. In other words, the Writers Guild is neither certified nor recognized to represent executive story consultants with respect to any other supervisory duties and is also not competent or does not have within its jurisdiction the right to discipline supervisory personnel for duties that are performed under express direction and express order by the other guilds and by their employers at that time, so long as those duties do not involve functions that fall within the jurisdiction of the Writers Guild of America, specifically writing.

MR. MENDONSA: In response, again this is an issue that has not been decided by the National Labor Relations Board nor any court of competent jurisdiction. It is the Guild's position that it has a right to place certain obligations and responsibilities upon its members, and failure to comply with those responsibilities or obligations will subject any member to disciplinary action by this Guild, regardless of whether or not he is performing services which would in fact be subject to the Guild's jurisdiction.

MR. LAVERY: The ruling on motion No. 7 is the same as on No. 6, denied.

MR. CURTIS: The No. 8 motion is another motion to dismiss, specifically on the grounds that the Trial Committee as a whole, and specifically members Poe, Monaster, and Lavery, and we have no prior information that members Kalish and Cringer would be present, so we are unable to include them in the motion at this time, based on a lack of information. However, it is a motion to dismiss based on

the premise that the Trial Committee as a whole, and specifically the three named members, have interests other than those of Guild members in general, under Article 10(b), Section 4 of the Constitution and By-Laws. Specifically, the Committee is composed as a blue ribbon committee of past -- and to the best of our knowledge or to our possible belief at this point -- present officeholders in the Guild, who by their nature would be devoting more than average time and energy to Guild matters in the protection of what are viewed as the Guild's interests. In other words, we believe that the composition of the Committee represents in effect Writers Guild of America management rather than rank and file. To our knowledge at this point, again based on our knowledge of the three members who we were advised would be present or might be present, we believe there is inadequate or no representation of producer-writer hyphenate members of the Guild on this Trial Committee, and that the Respondent would thus be denied the right to due process, in effect the right to a jury of his peers.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. This is the motion that has been made before that this is an elite panel. I just remind you that the motion seems to say that because this panel has some expertise in the field of the history of this Guild, its workings, its management, and expertise perhaps in the industry, that somehow or other the Respondent would be denied due process of law by being tried by this Committee. I suggest that really the truth is otherwise, that this panel should in

fact draw upon its knowledge and experience and judge the Respondent fairly with respect to whether or not he did in fact violate the Guild's strike rules and strike orders. This panel, by being composed as it is, has nothing more to gain from its decision than any other rank and file member of this Guild.

MR. LAVERY: Before ruling on the motion, it might be pointed out that the procedure followed in this Guild is not particularly different from procedures frequently following in bar associations when disciplinary committees are invoked. In bar associations it is generally the practice of the bar, to some of the most experienced members of the bar assocation, to sit in judgment on their fellows. In any event, the motion is denied.

MR. CURTIS: The No. 9 motion would again be a motion to dismiss, on the grounds that the Writers Guild of America is estopped from asserting and has waived its rights to discipline hyphenate members, specifically past actions of the Writers Guild of America, including the holding of special meetings, specifically where hyphenate members have demonstrated a clear recognition and the acceptance by the Writers Guild of actual status as writers, and also producers, directors, actors, or executives and supervisors. The motion is based on the premise that the Writers Guild cannot now discipline these hyphenates for this exercise of their right to function in these aforementioned capacities, since the contact with the Guild has expressed an implied acceptance of their right to function in these other capacities.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: I confess not to quite follow the logic of this. The Guild has always recognized the right of writers to perform as writers. Does that mean that they cannot discipline writers? If they recognize a particular category of writers as also being hyphenate, that does not mean any less members are any less subject to the rules of this organization.

MR. ORINGER: May I ask a question, please? I just don't understand the motion. I haven't heard it before, I'm sure. I mean, something specific about it. It is an apparent non sequitur to me, and I am sure I have missed something.

MR. CURTIS: Essentially, without restating the motion verbatim, it is based on the premise that the Writers Guild of America, by its past actions, as an example the holding of special meetings in which it discussed matters specifically and particularly involving hyphenates, has given recognition over the past few years to the dual status, if you will, of a number of its members as writer-producers, as producer-actors, as producers, and as producer-directors; that by giving this recognition to their dual status and implied acceptance of that dual status over the years, the Guild is now barred by the principle of estoppel; that is, detrimental reliance by these people on the Guild's past actions and past conduct would not be estopped from disciplining them for performing in their capacities other than their capacities as writers. I don't know if that

clarifies it or not.

MR. MENDONSA: Let me just point out that I do not know of any past conduct of this organization that would estop it from disciplining the members. In fact, no contact has been let go of in the past of a similar nature to what we are being faced with here today. I think that is really the issue of estoppel, whether or not this Guild has condoned this type of practice in the past, and there is no proof to that presented here at this time.

MR. LAVERY: I am perfectly willing to have any members of the Committee continue the discussion, but the Chair would like to point out that in the Chair's recollection, the meetings of the writer hyphenates in these last few months were not convened by the Guild. As I remember, the reports in the trade papers of the meetings were convoked by the writer hyphenates as a freewheeling discussion of common interest. I suppose if the playwright members of the Writers Guild of America, were there a considerable number, should happen to have a friendly caucus, that would not constitute a waiver on the part of the Guild as to its jurisdiction of the playwrights when they happen to be members of the Writers Guild of America, West.

MR. CURTIS: I think we can exclude from the motion any informal caucus without either the knowledge or the consent of the Writers Guild.

MR. MENDONSA: There is no denial on the Guild's part that it recognizes that there are writers in this industry who serve as writer hyphenates, any more than it

denies or recognizes the category of serial writers or comedy-variety writers or any other type of category that might be subject even to special negotiations such as the hyphenates in our present negotiations now. They have special interests, and for that reason they are recognized as having special interests.

MR. ORINGER: May I ask another question. This is just the principle I am trying to determine, whether all of us or most of us are laymen here, and I am just fascinated by this principle that you are enunciating. Just a hypothetical example. I am not suggesting it has any pertinence to this hearing. If, let us say, the Writers Guild or any similar organization convened a meeting of hyphenate members, let us just say hypothetically, for the purpose of informing such members that they were responsible for honoring Guild strike rules, are you then saying that such a meeting would bar the Guild from enforcing their honoring of such strike rules?

MR. CURTIS: I am not attempting to claim that that specific type of meeting in that specific type of contact would raise any estoppel.

MR. LAVERY: Gentlemen, unless there are more questions, I think we are getting a little afield from the charges as outlined, and unless there are specific objections, the Chair will rule the motion is denied.

MR. CURTIS: The No. 10 motion is a motion to dismiss the charges on the grounds that the case has been prejudged, as indicated by the following. Number one, the holding of

these hearings while the Writers Guild strike is still in progress, which removes, we believe, any pretext that the Trial Committee could be in a position to judge the evidence with total objectivity. At this point in time, during the conduct of this strike, we believe that there would be too much interest in protecting both the strike and the strikers. Secondly, the motion is based upon pretrial publicity. This Committee has had before it in numerous previous hearings, I believe, evidence of the pretrial publicity, for example, statements that appeared in the April 16th edition of Daily Variety, indicating those convicted will appear on a role of dishonor and will be listed in Guild publications in perpetuity, so the Guild members for years to come will never forget and also branding these people in the terms of the newspaper as "pariahs who have betrayed their colleagues." Also the reported statement by Ranald MacDougall, the president of this Guild, to the effect that, and I quote, "Of course, they are guilty."

For this reason and on these grounds, we would move for dismissal of the charges on the basis of an apparent prejudgment on the merits of those charges.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. As we stated in prior hearings, the motion is, I take it, to dismiss or to stay, am I correct, the hearing until at least after the strike, as the motion says that it is improper to hold anything during the strike.

MR. CURTIS: If I could respond intermittently to that,

I think, to the extent that the motion would be based upon the holding of the hearings during the strike, it could be taken as a motion to dismiss or in the alternative a motion to stay to the extent that it would be based on prejudgment, as indicated by pre-hearing publicity. It should be taken only as a motion to dismiss.

MR. MENDONSA: As to that part of the motion that would be to dismiss or to stay the proceedings until after the strike, we do not know at this time when the strike will end, if ever. We do not know at this time what will actually constitute the end of the strike. We have in fact ended the strike with several members of the Association of Motion Pictures and Television Producers. We have ended the strike with respect to many, many, many independent companies. We may end the strike with respect to the networks. We may end the strike with respect to the association as a whole, or we may end it with members of the association piecemeal. In any event, we do not know when that is going to come about. The only justice, the only way that justice can be rendered in this case is to have this person meet the charges, to have the Respondent meet the charges now when the witnesses' memories are fresh. I urge that the hearing not be postponed until after the strike.

As for the necessity or the lack of ability, I should say, of this panel to render a just decision during the strike, I would urge that it not consider the effects of its decision upon the strike, that it totally divorce itself from the strike and determine whether or not the

Respondent has in fact violated the Rules for the Conduct of Members During a Strike or the strike orders. But you should not have to consider what effect their decision may have upon the strike that is still in existence.

As for the motion or that portion of the motion to dismiss because of the pretrial publicity, I would again urge that this Committee disregard any of the pretrial publicity. If, in fact, you were not aware of it prior to this hearing, it has been made known to you by Respondent's counsel at this time, and he has otherwise refreshed your memory about it, but I urge you to put it out of your mind and not to consider anything that was stated in the trades with respect to this case or any other case or the strike in general.

With respect to the specific statements attributed to Mr. Ranald MacDougall, only to say that Mr. Ranald MacDougall is no longer a member of the Board of Directors, has no part whatsoever in the decisions being made of this hearing or any other hearing, and has not partaken in any of the decisions or discussions or deliberations with respect to any disciplinary case whatsoever since the trades have printed his statements or his alleged statements. The Board of Directors specifically has disregarded any of such statements that may have been attributed to Mr. MacDougall. So I urge that the motion or motions be dismissed.

MR. LAVERY: Considerable attention has been given to this motion, not only here today but in previous hearings. I don't think the Committee has to justify or defend itself.

Its behavior in these hearings, I think, has been rather scrupulous. None of the statements mentioned by counsel emanated from this Committee, and the truth of the matter is the Committee has gone to great lengths to preserve fair hearings and impartial considerations. The motion is denied.

MR. CURTIS: For the purpose of the last motion in this sequence, rather than wait on the motion, I'd like to ask at this time possibly for Mr. Mendonsa, if he is willing, whether Mr. Franklin will be present today to present the charges to the Committee.

MR. MENDONSA: Mr. Franklin will not be present today to present the charges. The charges will be presented by myself.

MR. CURTIS: In that case, as I believe has been done with this Committee before, we would move to dismiss the charges for failure by the Writers Guild to comply with Article 10(b), Section 6 of its Constitution and By-Laws, which indicates that the Executive Director shall present the charges and the evidence. We would point out that Article 3, Section 3 of the Constituion and By-Laws contemplates the appointment of both an executive director and counsel. If counsel is to act in the stead of the Executive Director, or in his shoes or in his place, the Constitution and By-Laws should have been specific on this. With respect to the factual problems or the preparation problems presented, I might indicate that the Executive Director, because of his participation in disciplinary actions, is in a unique position to understand or to know the sequence of events and to be

available for examination, cross-examination, and voir dire examination concerning the presentation of the charges, their preparation, their service, and their content. For that reason, we feel that his absence and his failure to be present to comply with the constitutional mandates of this Guild creates a prejudice to the Respondent that requires the charges be dismissed.

MR. POE: Question. What does voir dire examination mean?

MR. CURTIS: Voir dire examination is simply an examination somewhat in the nature of cross-examination to determine the foundational basis for evidence to be presented by a witness. In other words, it does not go, for example, to bias or prejudice of the witness but rather to his competence to testify adequately to foundational facts needed for the introduction of a specific line of testimony or piece of evidence.

MR. LAVERY: It hardly applies in a procedure like this. There is no such thing as voir dire in a hearing.

MR. CURTIS: The context of this hearing makes it somewhat difficult for me to accept the representation of it as a fact-finding committee. The continual use of the word "discipline" throughout the proceedings, throughout the Guild's Constitution, and the reference to this Committee as a Trial Committee in the Guild's Constitution would indicate to me that it is something more than a fact-finding committee. I don't mean to certainly engage in a semantic shell game, but to me a fact-finding committee implies

something less than full ability to make a decision on those facts and to take effective action based on their findings of fact or to effectively recommend action based on those findings.

MR. LAVERY: You realize we are not the final committee.

MR. POE: In direct connection with that, sir, can you tell me why Mr. Blees is not here?

MR. CURTIS: Mr. Blees is not present today on advice of counsel.

MR. POE: Which makes it difficult for the Committee to get at the facts, doesn't it?

MR. CURTIS: We would not view this procedure particularly in light of the Guild's Constitution as one where there is simply a totally objective impartial advisory proceeding that is designed to get at the facts. We view it as a disciplinary trial, which is, I believe, how it has been characterized before. To that extent, we would view the burden of the Guild and the burden must be met by this Committee as initially the Guild's proving of its case by clear and convincing evidence, and that evidence then being met appropriately by the Respondent.

MR. POE: I must take offense at that assumption, that we are only here to hear facts. We don't prejudge these cases.

MR. CURTIS: If there was a statement or an implication contained in my last statement aside from the prior motion concerning prejudgment, I apologize for it and retract it. No prejudgment was implied. What was implied is that we are

not in the sense, at least in one sense of a fact-finding hearing, present here in a nonadversary proceeding. This is certainly an adversary proceeding, particularly when taken in the context of all the circumstances involved. The strike, the charges, the possible punitive actions that could be taken against this Respondent and others, we are compelled to view this as an adversary proceeding between the Guild and the Respondent, with the Trial Committee sitting as an objective third person to make a decision on that and to effectively recommend what action should be taken based on its findings of fact.

MR. LAVERY: That should give Mr. Mendonsa a chance to comment.

MR. MENDONSA: Getting back to the motion that the Executive Director is now presenting this case, and that therefore this case should be dismissed, the Constitution in Article 3, Section B states the responsibilities of the Executive Director. It would be ridiculous to assume that the Executive Director personally had to carry out all of the duties and responsibilities given to him in the Constitution. I submit that he has the authority to delegate just by reasonable reading of the Constitution. He has an authority to delegate his responsibilities and his duties. In no way has the Respondent in this case been denied due process of law by having this case presented by the resident counsel as opposed to the Executive Director. The resident counsel does have the same information that the Executive Director has with respect to these charges, was present at

all Board of Directors meetings at which these charges were discussed, and knows as much or perhaps even more than the Executive Director has with respect to this change.

MR. LAVERY: In this connection, the Committee and previous panels has heard this motion on many occasions. It will be repeating the obvious to say that it is the opinion of this Committee that the Constitution of the Guild, like many fine constitutions in this land of ours, is a system of delegated powers as well as implied powers, the powers here currently delegated within the meaning of the Constitution; and the motion is denied.

MR. CURTIS: I believe, Mr. Chairman, that would conclude the Respondent's motions at this time.

MR. LAVERY: Mr. Mendonsa, how shall we proceed from here? Trial Committee's Exhibit 2?

MR. MENDONSA: Yes. If we can get the rest of the Trial Committee's exhibits in, we are ready to proceed. Bear in mind that Trial Committee's Exhibit No. 1 has only been marked for identification. It has not been admitted into evidence yet, so I offer it in evidence.

MR. LAVERY: Trial Committee Exhibit 1?

MR. MENDONSA: Right.

MR. LAVERY: So honored.

MR. MENDONSA: Do you want to go ahead with the others, 2, 3, and so on? Would you like me to state what they are?

MR. LAVERY: That might be good for the record.

MR. MENDONSA: Trial Committee Exhibit No. 2 would be a two-page letter dated April 23, 1973 addressed to

John A. Mendonsa by Richard N. Fisher. It is a letter requesting, among other things, an extension or continuance of the trial date to a time five days beyond the date that was originally scheduled in Trial Committee's Exhibit No. 1.

MR. CURTIS: Respondent would have no objection to the admission of Exhibit 2.

MR. LAVERY: All right. Trial Committee's Exhibit, that is 3, is admitted in evidence.

MR. MENDONSA: That would be No. 2.

MR. LAVERY: 2, No. 2.

MR. MENDONSA: This would be 3. Trial Committee's Exhibit No. 3 is a two-page letter dated April 27, 1973 addressed to Richard N. Fisher signed by John A. Mendonsa. It is a letter supplying certain information. It is in reply to Trial Committee's Exhibit No. 2 and grants a continuance in the hearing to May 17, 1973.

MR. CURTIS: If Mr. Mendonsa would be willing to stipulate that Rule 30 of the Rules for Conduct of Members During a Strike has been withdrawn and would not be deemed to be applicable to the Respondent in this action, we would have no objection to the introduction of this evidence.

MR. MENDONSA: I will stipulate to that, as long as I relate it to Rule No. 30, as it appeared in the Rules for the Conduct of Members During a Strike dated February 20, 1973.

MR. LAVERY: Agreed?

MR. CURTIS: Agreed.

MR. LAVERY: So stipulated.

MR. MENDONSA: Is the exhibit then admitted?

MR. LAVERY: Unless there is no objection, yes.

MR. CURTIS: No objection.

MR. MENDONSA: This will be No. 4. Trial Committee's Exhibit No. 4 is a letter dated May 11, 1973. It is a one-page letter addressed to Richard N. Fisher signed by John A. Mendonsa. It is a letter advising that the trial in this matter is continued to May 23, 1973.

MR. CURTIS: No objection.

MR. LAVERY: Trial Committee No. 4 is admitted into evidence.

MR. MENDONSA: This is No. 5. Trial Committee's Exhibit No. 5 is a one-page letter dated May 10, 1973 addressed to John A. Mendonsa and signed by Larry A. Curtis. It is a letter advising that the law firm of Musick, Peeler & Garrett has assumed the representation of Robert Blees and has asked for a continuance of the trial date to a period of not less than two weeks.

MR. CURTIS: No objection.

MR. LAVERY: Trial Committee's Exhibit 5 is admitted into evidence.

MR. MENDONSA: This will be 6. Trial Committee's Exhibit No. 6 would be a one-page letter dated May 16, 1973 addressed to John A. Mendonsa signed by Larry A. Curtis. It is a letter confirming a prior telephone conversation and it recognizes that the trial date was moved to May 23, 1973.

MR. CURTIS: No objection.

MR. LAVERY: Trial Committee's Exhibit No. 6 is admitted into evidence.

MR. MENDONSA: Trial Committee's Exhibit No. 7 is a one-page letter dated May 16, 1973 addressed to Larry A. Curtis from John A. Mendonsa. It is a confirmation that the trial date has been continued to May 31, 1973.

MR. CURTIS: No objection.

MR. LAVERY: So ordered. No. 7 is admitted into evidence.

MR. MENDONSA: That would be the extent of the Trial Committee exhibits then.

MR. LAVERY: Have we reached the point of opening statements, Mr. Mendonsa?

MR. MENDONSA: Yes. Very simply we intend to show that Robert Blees is a member of this Guild; that on or about March 6, 1973 he crossed a Guild picket line at Samuel Goldwyn Studios and did so for the purposes of rendering services for a company which was appearing on the Guild strike list at that time. He did this in violation of the Guild strike orders and Strike Rules 12 and 13 for the Rules of Conduct of Members During a Strike dated February 20, 1973.

MR. LAVERY: Respondent?

MR. CURTIS: We would ask for the right to possibly reserve opening statement until the Respondent's case in chief, with the understanding that that opening statement may be waived at that time.

MR. LAVERY: Very well.

MR. MENDONSA: We will call as our first witness Mr. Carey Wilber.

CAREY WILBER,

called as a witness,

testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Mr. Wilber, will you please state your name and spell your name for the record.

A Carey Wilber, C-a-r-e-y W-i-l-b-e-r.

Q Mr. Wilber, are you a member of the Writers Guild of America, West, Inc.?

A I am.

Q And how long have you been a member of the Writers Guild?

A Almost 20 years.

Q Now you are also the co-chairman of the Strike Services Committee?

A That's correct.

Q And approximately how long have you been co-chairman of that Committee?

A Oh, I believe since last October.

Q And now, will you briefly describe your responsibilities and duties as co-chairman of the Committee.

A Organization and maintenance of picket lines around struck facilities.

Q And do you maintain a staff to assist you in that regard?

A Yes.

Q And approximately how large is that staff?

A All together, on the house committee, we would have about 40 people, I would say.

Q Now, this strike in this matter began on March 6th of 1973. Can you tell us when picketing began at Samuel Goldwyn Studios?

A 6:00 A.M. on March 6th.

Q And is there at this time picketing going on at those studios?

A No.

Q Can you tell us when picketing ceased?

A About two weeks ago, I believe.

Q Now, was there picketing continually every day up from March 6th through that period of two weeks ago?

MR. CURTIS: Objection. The question is irrelevant. We are concerned within the scope of the charges on this with the date of March 6th.

MR. MENDONSA: All right. Let me rephrase the question.

Q Let me direct your attention to the first day of the strike. Was there picketing going on at Samuel Goldwyn Studios?

A Yes.

Q And can you tell us were there pickets established at those studios at every gate or every entrance to the studios?

A Yes.

Q And can you tell us approximately how many pickets would have been established at each gate?

A Two. At least two.

Q And during what time of the day were there pickets at each gate at that studio?

A 6:00 A.M. to 6:00 P.M.

Q And were those pickets carrying signs?

A Yes.

Q And can you give us an idea what those signs said?

A "Writers Guild on Strike." I am paraphrasing them now. "Writers Guild on Strike Against Quinn Martin Productions." I think that is about the case.

MR. CURTIS: Could we interject and ask for some characterizations of the witness's last answer as to whether the quotation or the paraphrasing was the content of one sign or whether that was the content of several different signs?

THE WITNESS: I would have to ask counsel to clarify the question.

Q BY MR. MENDONSA: You stated that there were signs that said "Writers Guild on Strike". Did that appear on all signs?

A Yes.

Q Now, there were some signs that said "Writers Guild on Strike Against Quinn Martin Productions." Did that appear on all signs?

A Not on all signs, but we had them.

Q Were all pickets issued signs?

A Yes.

Q Can you give us some idea of how large these

signs were, the size?

A I'd say about two and a half feet wide, three feet deep.

Q And will you tell us of what colorings they were printed in or if they were printed?

A Some were in yellow and black, some were in red and black.

Q That would be black lettering on yellow background?

A Black lettering on yellow background or black lettering on red background.

Q I have no further questions.

EXAMINATION

BY MR. CURTIS:

Q Mr. Wilber, with specific reference to March 6th, 1973, were you personally present at Samuel Goldwyn Studios during any time that day?

A Yes, I think I reached Samuel Goldwyn Studios that morning either about 7:00 o'clock or shortly after.

Q How long were you at Samuel Goldwyn Studios that day?

A Five or ten minutes, just long enough to check the lines.

Q Did you return to Samuel Goldwyn Studios at all during the day of March 6, 1973?

A Yes. I believe I dropped back there in the afternoon.

Q Can you tell me the approximate time when you were

back?

A No. Just sometime in the early afternoon.

Q When you say "early afternoon," can we assume that was prior to 5:00 P.M.?

A Yes.

Q You say only about half of the signs indicated that the Writers Guild was on strike against Quinn Martin Productions?

A Well, I can't remember the exact portion, except that we carried at that time three different kinds of signs. One said "Writers Guild of America on Strike," one referred to the Quinn Martin Productions, and one, I believe, said "Support Writers Guild against Reruns."

Q Now, do you personally know Robert Blees?

A I wouldn't recognize him.

Q I have no further questions.

MR. MENDONSA: I have a couple.

EXAMINATION

BY MR. MENDONSA:

Q Were there picket captains assigned to the picketing at Samuel Goldwyn Studios?

A Yes. Robert Lewin was the picket captain.

Q And was he assigned to be present all day?

A No. He had to supervise the change of shifts.

Q So he would be there at the beginning of each shift and the end of each shift?

A At the beginning and the end of each shift, yes.

Q Now, was he instructed, if there were a lot of picketing or lack of pickets, to report to you?

A Yes.

MR. CURTIS: Objection. The question calls for hearsay.

MR. MENDONSA: Well, this Committee is not bound by the rules of evidence. I understand that there may be some hearsay.

MR. LAVERY: I think the question should be allowed. It isn't too wide.

THE WITNESS: Could we have the reporter read back the question?

(The reporter read back the last question.)

Q BY MR. MENDONSA: Did Mr. Lewin report to you that there was a failure of picketing or lack of picketing on March 6, 1973?

MR. CURTIS: Objection. Calls for hearsay.

MR. LAVERY: Overruled.

THE WITNESS: Not to my recollection.

MR. MENDONSA: I have no further questions.

MR. CURTIS: Nothing further.

MR. LAVERY: Does the Committee have any questions? No questions.

MR. MENDONSA: We call as our next witness Gene Levitt.

GENE LEVITT,

called as a witness,

testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Mr. Levitt, will you please state and spell your name for the record.

A My name is Gene Levitt. G-e-n-e L-e-v-i-t-t.

Q Mr. Levitt, are you a member of the Writers Guild of America, West, Inc.?

A Yes, I am.

Q And approximately how long have you been a member of that Guild?

A At least 20 years.

Q Will you tell us, were you employed prior to March 6, 1973?

A Yes, I was.

Q And immediately prior to that date by whom were you employed?

A Quinn Martin Productions. I was the producer of BARNABY JONES.

Q Do you know Robert Blees?

A Yes, I did.

Q And will you tell us what your relationship with Mr. Blees was at that time? Was it a casual friendship, or did you have a business relationship, or what was it?

A Since he was my story editor, we had a business relationship, but we had a friendship. I have known him about 10 years, at least 10 or 12 years.

Q And he was your story editor on BARNABY JONES?

A Yes, he was.

Q And was he story editor on BARNABY JONES as of March 5, 1973?

A Yes, he was.

Q Did you report for work at Quinn Martin Productions on March 6, 1973?

A No, I did not.

Q Giving your attention directed to the date March 6, 1973, did you on that date have a telephone conversation with Robert Blees?

A Yes, I did.

Q And did you call Mr. Blees, or did he call you?

A I called him.

Q And where did you call him?

A At his home.

Q And did he answer the phone?

A Yes. After somebody else in the house answered it, yes, he answered it personally.

Q Somebody else answered the phone. Did you ask them for Mr. Blees?

A Yes, I did.

Q And did Mr. Blees then come onto the phone?

A Yes, he did.

Q And did you recognize his voice?

A Yes, I did.

Q Will you tell us to the best of your recollection as precisely as possible what you said to Mr. Blees and what he said to you in that telephone conversation?

MR. CURTIS: Objection. Hearsay.

MR. LAVERY: Overruled.

THE WITNESS: He spoke first on the telephone, and he said, "Where were you today?"

And I said, "I was on picket duty today. I heard that you went into work."

And he said, "Yes, I did."

And I said I thought that was all wrong to do, and I was surprised at him that he did it.

And he said -- I can't remember any direct words, but he began to speak about why he thought he was going to go into work, and if he went into work, why he should go into work.

And I cut the conversation short by saying I was disappointed that he would do that and "Good-bye," and I hung up.

Q During that conversation, did he state anything about crossing the picket line in order to go to work?

A Not to my recollection. He went to work, and he knew a picket line existed.

Q Now, do you know what services he was performing on that date for Quinn Martin Productions?

A No, I do not.

Q I have no further questions.

MR. LAVERY: Respondent?

EXAMINATION

BY MR. CURTIS:

Q Mr. Levitt, you indicated that when you talked to

Mr. Blees on the phone, he indicated to you his reasons that he felt he should perform services or should be present at Quinn Martin Productions that day. Can you to the best of your recollection tell us what those reasons were?

A No. Beyond he just thought it was proper to go in, he just chose to go into work. I cannot recollect. If he did say anything more specific, I do not recollect it.

Q Do you recall whether he gave you any justification in terms of his requirement to report under the jurisdiction of the Producers Guild of America?

A No. I don't recall him saying anything like that.

Q Do you recall whether he made any statement concerning the requirement to report as required by his employer, Quinn Martin?

A No. I called to verify whether or not he had gone to work, and he verified to me that he had.

MR. CURTIS: Nothing further.

MR. LAVERY: Are there any questions?

EXAMINATION

BY MRS. KALISH:

Q Prior to March 6th, you stated you were producer of BARNABY JONES. What were Mr. Blees' duties as your story editor?

A I suppose they were twofold. To aid me in the selection of stories, finding stories, and shaping and forming those to our requirements, and, B, doing rewriting work on stories where we had -- either with -- in concert

with the writer or after the writer had done his rewrites, doing our own polish. And further writing as dictated even by me, or by the executive producer or supervising producer.

MRS. KALISH: Thank you.

EXAMINATION

BY MR. POE:

Q Mr. Levitt, do you have any reason to believe that Mr. Blees has not done rewriting since March 6th?

A Do I have reason to believe that he has not?

Q Not.

A Well, the strike, of course -- Quinn Martin was a signatory after a period of time. You mean during the period?

Q During the period of March.

A I have no knowledge one way or the other, since I never returned to the office until the strike was over, and I have no knowledge whatsoever that he did any writing.

MR. CURTIS: Just for the record, sir, could we note the Respondent's exception to the portion of the question that would pertain to March 6, 1973, since it would be outside of the scope of the charges?

MR. LAVERY: It will be excepted. We will note it.

EXAMINATION

BY MR. ORINGER:

Q Did you speak to Mr. Blees subsequent to March 6th concerning the matter of his reporting to work on

March 6th concerning the matter of his reporting to work on March 6th?

A Not until -- yes, I did subsequent to March 6th, not until the strike was over, and I returned to work.

Q Can you describe that conversation pertaining to the events of March 6th?

A Yes. Let me be sure. No, I did not speak to him until that date at any time nor have any communication. I just want to search my memory. Yes. When I returned to work -- I can't name the date, but it is available -- The day after the day of the Writers Guild dinner, whatever Sunday, that next Monday. I reported to work, and I had a conversation, because people were gathered in my office, and the essence of the conversation was that I did not approve of Blees having been there. I felt that it was improper, and I was -- did not wish to work with him directly.

Q And you said this directly to Mr. Blees?

A Yes, I did, in my office. In essence I recall he said, "Welcome back."

And I said that I felt strongly that it was a wrong thing to do and that I didn't approve of it and felt that it was very difficult to work together.

And he told me that I would have to work with him.

And I said, "We'll see about that."

That in essence is the conversation that I recall at that time.

EXAMINATION

BY MR. POE:

Q Do you know how soon that was after Quinn Martin signed?

A (No response.)

MR. MENDONSA: Well, Quinn Martin signed right about March 16th. It would be within a day or so of that.

Q BY MR. POE: Mr. Levitt, on the day of this second conversation, as producer of the series, did you see any evidence that Mr. Blees had done any rewriting?

A No, I do not. I saw no evidence that he had done any rewriting.

MR. MONASTER: May I ask a question?

EXAMINATION

BY MR. MONASTER:

Q Mr. Levitt, when you left on March 5th, were there any scripts for the series that were in an incomplete stage?

A Yes, there were.

Q Then in answering that you saw no evidence that Mr. Blees had done any rewriting, are you in effect saying that every script that you left behind was exactly at the same point?

A No, I am not saying that. Shall I clarify that?

Q Yes, please.

A To the best of my knowledge I can't tell you chapter and verse, but there were perhaps three scripts in one state of readiness or semi-readiness, and two of those

at least had been, I was told, rewritten or polished, whatever you wish to call it, by Adrian Samish, who was the supervising producer of Quinn Martin Productions and/or anybody else, I have no knowledge. In other words, Samish came to my office and did some rewriting there and did some elsewhere, and the scripts were mimeographed, and then they were on my desk, which I promptly rewrote.

Q Was it a pattern for Mr. Samish as part of his duties to rewrite normally?

A No. He never normally did do any rewriting himself. He would write memos about, in other words, the finished script which I sent to Adrian Samish and Quinn Martin, who is executive producer. I would get their comments back in a memo from Adrian Samish and make the corrections or Blees would make them.

Q But out of a sense of fairness, because you are not ruling out the possibility that Mr. Samish was suddenly endowed with the ability to write?

A I believe he is a writer. I don't believe he is a member of this Guild, but I have no reason to doubt that Samish did writing.

MR. CURTIS: For clarification, and possibly Mr. Mendonsa can correct me, I believe Mr. Samish in his capacity with Quinn Martin is specifically exempted from the requirement that he be a member of the Writers Guild with respect to any writing or rewriting done by him.

MR. MENDONSA: Well, I can't clarify. I can't say whether or not he has actually done writing which would have

required him to join the Guild under the collective bargaining agreement that was in existence. That would depend upon the degree of writing and whether or not he was doing writing within the provisions of A through H, which in his capacity he could have been doing without joining the Guild.

MR. CURTIS: What I was getting to is that there are certain areas of writing where Mr. Samish was able to join without joining the Guild.

MR. POE: Is he not a member of the Guild?

MR. CURTIS: To my knowledge, he is not.

MR. MENDONSA: I can't tell you.

MR. POE: Could we have that checked right now? Does anybody here know?

MR. MENDONSA: Do you wish to recess? I will get the information for you.

MR. LAVERY: It might be time to take a small recess anyway.

MR. POE: Can you wait?

THE WITNESS: I can wait.

MR. LAVERY: A short recess while, among other things, we get the data on Adrian Samish.

MR. CURTIS: Mr. Chairman, prior to the recess appearing on the record, could we simply note an exception on the line of questioning concerning whatever rewriting or not, on the grounds that it would not be relevant to the charges against Mr. Blees?

MR. LAVERY: Yes, I will have to overrule you.

(A short recess was held.)

MR. LAVERY: Shall we go on the record. There are a few questions from the Committee for Mr. Levitt.

EXAMINATION

BY MR. LAVERY:

Q Mr. Levitt, are you still functioning as a producer with Quinn Martin?

A No, I am not.

Q What was the date of your separation from Quinn Martin?

A Oh, boy.

Q Well, in relation to the end of the strike situation then. At the end of the strike situation, you returned, and can you give me dates of whether that would be March 10th or 16th?

A Oh, I can tell you, yes. I would say about approximately a month. I stayed on as the producer until April 15th.

Q Did you have any conversation with the management of Quinn Martin about your absence from the studio?

A No. I mean other than comments to the effect that I had returned and here I am and --

Q Well, putting it another way, and this is a little blunt, but was there any cause and effect of your absence and noncontinuance at Quinn Martin?

A Not in my opinion. This is also, I think you should be advised, part of my contract with Quinn Martin was I

agreed to do these 13 one-hour episodes for a stipulated sum, plus a one-year contract following that. To go on with the show if it were picked up. And I was -- my option was exercised. If the show was not picked up or if they did not choose to exercise my option, my contract stated that I had to write and direct two Movies of the Week, four pieces -- that is right, two Movies of the Week, hour and a half or two hour and direct two two-hour or hour and a half at stipulated sums, pay or play.

EXAMINATION

BY MR. MONASTER:

Q Not necessarily the ones you wrote?

A No, not necessarily. It could be, but it didn't have to be. So when the show was picked up, I found out eventually from Mr. Martin that they would not exercise my option to continue on with BARNABY JONES, and which was a surprise, and I said, "You mean I'm fired?"

And they said, "Well, that is one way of putting it, but not really. We are not exercising that part of your option."

So that is where it stands, that if within one year, I have to be employed. This way, pay or play. In my opinion, from my conversations and so on with Quinn Martin, I don't feel that it is connected myself. As I say here, I don't find it -- I just think I was too tough a cookie for the organization.

EXAMINATION

BY MR. LAVERY:

Q Is Mr. Blees still functioning with Quinn Martin?

A Not to my knowledge. That is hearsay. I mean I have been told that he was leaving the last day of the BARNABY JONES show, but I don't know if he is working or anything.

EXAMINATION

BY MR. ORINGER:

Q You had stated before words to the effect that in Mr. Blees' or your office, when you returned to work, that you were not going to work with Mr. Blees; is that correct?

A Something like that.

Q And that he said, "We have to work together."

And you said, "We'll see."

Now, that, I think, we all recognize as a curt answer. I would like to know what happened when the next act began.

A What happened essentially was I feel that the relationship between story editor and producer requires a rapport. I felt because of my own feelings on crossing the picket line and upholding the dictums of the Guild that I didn't approve of what he had done, which I said. As such, although I was told that it was proper to work with him, that in other words whatever would be done, there would obviously be a change one way or the other, that the executive

producer was cognizant of this and would not keep, I am sure, both of us on, and the producer chooses the story editor so to speak. However, your question was --

Q Did you in fact work together with him?

A At arms length. By memo.

Q Okay.

A Yes, he discharged his duties as I saw fit, and I carried on with my work.

Q Did you find that a hindrance to you in the performance of your own duties, that particular relationship?

A Yes, I did.

Q When in your first or subsequent conversations, really in any conversations that you had with Mr. Blees all relating to that first conversation you had when you called him up and you said you were displeased with the fact that he had reported to work on March 6th, did Mr. Blees offer any description of what specific services he was going to and was not going to perform?

A No, he did not.

Q Specifically, did he say anything to the effect that, "I'm not going to perform writing services"? Did he comment on that particular subject in any way?

A Himself?

Q Yes.

A To me? Not to the best of my recollection.

Q To you in your professional relationship with Mr. Blees -- I am just really clarifying something that you had touched on earlier.

A Excuse me. You were speaking of the time while we were on strike, and I never spoke to him again. You are speaking of --

Q What I am saying was in any conversations you had -- forget about where the conversation took place -- did Mr. Blees indicate that he was or was not going to perform writing services during this strike? In other words, did Mr. Blees in any conversation you had with him, refer to his performance of specifically writing services during the strike period or on March 6th?

A No. Not to the best of my recollection. There was never more than 10 words exchanged.

Q You were the producer of the show. He was the story editor, and you stated that there are occasions when he would perform -- you use the word "polishes" on certain scripts after the script had been delivered. Now, I am asking you to give a professional opinion of a colleague here. Was Mr. Blees capable in your opinion of taking a script that a writer had submitted and finished the traditional work on, was Mr. Blees capable if that required what you call a polish, was Mr. Blees capable of making that polish and doing so in a manner that was consistent with the standards of the BARNABY JONES show?

A Yes.

EXAMINATION

BY MR. POE:

Q You say the BARNABY JONES setup is that the

producer hires the story editor?

A No. With consent, okay.

Q And the story editor looks for story material or outlines or whatever and brings them to the producer's attention?

A Yes.

Q And the producer makes a decision on whether or not to buy, doesn't he?

A He makes the final recommendation to the executive producer and the supervisor.

Q And the executive producer is actually the man in charge of saying yea or nay?

A That's right.

Q That also goes for the hiring of writers?

A Yes.

Q And that also goes for the firing of writers?

A Yes.

Q In other words, the story editor does not approve story buys or the actual hiring of writers or their deals or the firing of writers? That is not his function? He may make recommendations, but the story editor doesn't do these things?

A No.

Q What are his actual executive functions then?

A Unknown to me, outside of what I have stated. Concerning stories I know of no executive function.

EXAMINATION

BY MRS. KALISH:

Q You stated that to the best of your feelings you have no feelings that there was any cause and effect in the fact that you are no longer producer, that your option was not exercised. Beforehand, that is, prior to the strike, which started March 6th, was there any communication either oral or written from the Quinn Martin Productions that you were not to go on strike? In other words, that you were to observe your contract?

A Yes, yes. In the last hour before the strike, I received a telephone call from somebody in transportation that said a letter was on its way from Warner Bros. where Quinn Martin's headquarters are -- by carrier pigeon, actually by messenger, hot messenger, quick messenger for Mr. Blees and for me. And please not to leave until the letter got there. I received the letter, and Bob Blees received the letter, because I came into my office, and we read the letters which was the standard letter, although they recognized our duties as a writer to the strike, that we were, or I was, speaking of mine to answer your question, an executive, and they expected me to carry on with my duties and such.

EXAMINATION

BY MR. POE:

Q Did Mr. Blees' letter say that he was an executive too?

A I think as near as I remember about the same kind of letter exactly.

EXAMINATION

BY MRS. KALISH:

Q Did you talk with Blees at the time you received the letter?

A Yes, we did.

Q And did he make any comments?

A The only comments I recall, we were finishing up what we were leaving in order and in shape, and we -- he did express and make the statement executive story consultant. Well, that is just a euphemism for story editor. Those were the only comments, and I had dinner with him that night, went from the office to dinner together, and from there to the Beverly Hilton, to the Guild meeting, but we separated because we had separate cars, and there was no conversation in any way, shape or form, and it was my complete assumption that we knew there would be or assumed there had been a strike call, and Blees was not going into work. It was never mentioned that way.

Q Did Quinn Martin or Warner Bros. say anything to you about indemnifying you for any damages which you might suffer in the strike?

A Well, it is a form letter. I can't recall if it said it would indemnify me or indemnify court costs.

Q Or fines?

A Or fines. I would have to consult that letter. I

don't remember anymore.

Q But it was your impression?

A It was my impression that it would indemnify me against fines. That is my impression.

Q I think on the other tack, were there any penalties you might suffer by observing the picket line?

A In the letter?

Q Yes, or in the statements.

A Well, again the letter stated that I was a member of the executive echelon, something like that. Those aren't the correct words, and, as such, I was expected to carry out my contractual duties, but there was no threats that I recall.

EXAMINATION

BY MR. MONASTER:

Q May I ask a question, Mr. Levitt? You testified that you called Mr. Blees either on March 6th in either the day or evening. I assume it was evening, because you said you called him at home. And you indicated it was either displeasure or disappointment -- I forget the exact word. I would infer from that that you had without any exact statement of "I will or will not" a general feeling that Mr. Blees would have observed the strike if it was voted that night?

A Markedly so, that he would observe it.

Q That he would?

A I was surprised, angered, upset, disgusted, any words you would use.

Q Based on general morality or based on an impression that you had gathered?

A Based on the general morality that someone who was a close friend and co-worker was violating the strike rules. I was shocked in my answer.

EXAMINATION

BY MR. ORINGER:

Q May I ask a catchall question. Is there anything that you can think of that might be offered as a reason or as a defense -- I am trying to make this as broad as possible -- that might be attributed to Mr. Blees for reporting to work on that day on March 6th?

A Naturally you try to reason why somebody has done something. I know that he is in the Producers Guild. I believe he is a member of the pension fund or pension committee, and I know that he is a member of it. I also can understand that somebody may feel, although he never spoke to me of any of this. This is all my conjecture. Why he would do it? I can only answer that he must have believed that it was the proper thing to do.

Q Do you have any reason to feel that he was acting under some form of duress? I don't mean necessarily direct duress. I mean pressure.

A None whatsoever. I am only conjecturing. I have no idea. That is my true answer.

MR. LAVERY: Perhaps we should give Mr. Curtis a chance to ask his questions.

EXAMINATION

BY MR. POE:

Q He was trustee of the pension plan?

A Trustee.

EXAMINATION

BY MR. CURTIS:

Q Mr. Levitt, how long were you the producer on BARNABY?

A Five months.

Q Now, with respect to the period prior to March 6th when the strike began, how many scripts did you have an active part in shooting?

A Preparing and shooting, you mean?

Q Preparing and shooting, yes, sir.

A Well, I would say we had ready about 17 scripts. In other words, the pilot film was done, was already written, and I had nothing to do with the pilot film. I took the job to prepare 13 scripts, and they decided they might shoot three more. I got three more, which meant 16, and it probably took 18 scripts to insure the 13, but when I left, I imagine we were shooting No. 10 or 11, so when I came back, we shot 12 and then finished up 13, and I left.

Q Were those scripts present on the lot at the time that you hired on as the producer of BARNABY, or were they submitted after your tenure as producer?

A They were all scripts I got.

Q Now, with respect to Bob Blees' duties as executive

story consultant, as I believe he is known or was known in the Quinn Martin organization, did he do the initial interviewing of writers?

A Sometimes. If I may explain the general terms, when I first took the job and came in and spoke to Quinn Martin and Adrian Samish together, I said, "Here's what I think five or six stories should be about."

And I would tell them in a precis form just the general idea. "Yes, yes, no, no, et cetera," however they felt. Some of those ideas that they approved of at once I took and assigned to writers whom they approved of. Then that was one bag, so to speak. The other bag was to open the doors to writers in general who would come with ideas. The design was, in the beginning we would submit the engagements. Bob would take some independently; I would take some independently. When Bob had an idea with a writer he thought was good, he would come to me with the writer, and then we would work together. More often then, as we began to get stories into outline form or in some good form, we would meet -- Bob, myself and the writer or writers concerned. Then, as we got into production, as a production date neared, which was very close, as you may imagine, because the whole job lasted five months -- it was six weeks perhaps.

Then, as I had more and more duties, Bob would see new writers, people with new ideas himself, and then if he thought there was somebody, either bring it to me with the writer or bring it or bring the idea and the writer concerned to me.

Q In other words, he would recommend in some cases that a writer be retained to prepare the script, or that a writer not be retained to prepare the script?

A Well, that isn't quite accurate. That the writer's initial idea, as you may or may not know, you hear an idea, the idea appeals to you. Then, you get an okay, and I assign the writer to do an outline. If the outline is approved, he is paid, whether or not it is approved. Then he goes on to the script.

So what you said wasn't entirely accurate, but in general it is the idea.

Q In other words, at some phase of the preparation, from the time that the writer first came in with an idea or was given an idea to work on, at some point that writer would talk to Bob Blees, and Bob Blees would recommend to you or to others in the Quinn Martin organization that the writer either be authorized to proceed or not to proceed with that idea?

A Yes. It went directly through the chain to me, and then, if I approved of it or approved of it amended, it would go to Quinn Martin and Adrian Samish for their okay.

Q Can you give us an estimate of approximately how many times Bob Blees would have made a recommendation to let a writer go ahead with the story outline on the basis of the idea submitted? Your best estimate is sufficient.

A Six.

Q Six? Can you tell us how many times that recommendation of his was rejected by you or by --

A I would like to change that and say 10, and say perhaps I rejected half of those. This is really a guess, an estimated guess.

Q You indicated something in response to one of the questions from a member of the Trial Committee concerning a letter regarding indemnification. Do you personally know whether or not Bob Blees received such a letter?

A Yes, he did.

Q You also mentioned earlier in your testimony that Mr. Blees did not indicate directly to you that he did not perform writing services or that he actively refrained from the performance of writing services during the strike against QM. Am I characterizing that accurately?

A He did not either way state categorically that he did or did not.

Q Now, did anybody in the QM organization indicate to you that Bob Blees had in fact refrained from any writing services during the strike?

A Yes.

Q And who was that person?

A To the best of my recollection it was Adrian Samish.

Q And did he indicate to you that Blees had in fact refrained from performing any writing services during the strike?

A Yes, he did.

MR. CURTIS: Nothing further.

MR. MENDONSA: I have a couple of questions.

EXAMINATION

BY MR. MENDONSA:

Q You stated on the record that there may have been roughly 10 times that Mr. Blees came to you with a recommendation that a writer be given the go-ahead to write an outline based upon a story idea; is that correct?

A Yes.

Q Now, there were approximately five times or half of the times -- a number of times that you rejected it yourself? You rejected that idea; is that correct?

A Yes.

Q And the writer then was not hired to do the outline?

A That's correct.

Q Now, with respect to the other five, the writer was hired to do an outline; is that correct?

A Yes.

Q And did you have the final say as to whether or not that writer would be given the assignment?

A No, I did not. It was subject to -- I would -- In other words, the pecking order if a story idea had come to Bob, and Bob approved of it, and he would bring it to me, and I would, as I stated, perhaps agree amended or have some doubts once in a while myself and want somebody else's opinions, which was unusual, but I would then say, "Yes, I approve the idea and the idea as amended by me," and in concert sometime together talking it over, and then the idea was told me, usually sometimes by Bob, usually by me to Adrian Samish and/or Quinn Martin himself. Then the idea

was approved, and the writer would then go ahead and write an approved formal outline, and then we would usually be meeting again with the writer, and then the writer would go off and write his outline, submit it. It would be edited by Blees and myself, rewritten to our satisfaction, then submitted to Samish and Martin, and if they approved that as such, it went to the network. Just so the direct lineation is there anyhow.

Q Excuse me. I wanted to get that first step. When Mr. Blees would come to you on those five occasions when the writer was finally assigned to the outline, did he come to you with simply the idea, or did he come to you with the writer, and did you have a meeting then with the writer?

A Both. I would say the number five as rough, as I said, but both. Sometimes I came with the writer, and sometimes he would just come and tell me himself.

Q Now, were you concerned with talking to the writer, or were you more concerned with what the idea was?

A At that stage, I was much more concerned with what the idea was.

Q And in every case then where you approved of the idea, either amended or as it came to you, it was passed on to Adrian Samish and/or Quinn Martin?

A Yes.

Q Before the person was hired actually?

A In every case.

Q So you know of no instance where Mr. Blees came

simply with an idea and said, "Hey, this writer has got a great idea. I think we should hire him," and he wasn't then hired?

A None. We could not hire anybody in that way directly.

MR. MENDONSA: I have nothing further.

MR. CURTIS: Nothing further.

MRS. KALISH: May I ask a question of the counsel?

MR. LAVERY: We have a delayed question, but not for this witness.

THE WITNESS: Am I excused?

MR. LAVERY: All right. Thank you very much.

MR. ORINGER: Thank you.

MR. MENDONSA: May this witness be excused? Any objection?

MR. CURTIS: Yes, no objection to excusing the witness.

MR. MENDONSA: Just on the record, before we went into our last recess, there was a question of whether or not Adrian Samish was a member of the Guild, and the answer is "No".

At this point, I would like to introduce into evidence the credit records for Mr. Blees, and I would mark as Guild Exhibit No. 1 a one-page document with the name in the upper left-hand corner, Robert Blees. Let me show it to counsel. I ask if we can stipulate that this is a record kept in the normal course of business.

MR. CURTIS: May I see it a moment?

MR. MENDONSA: At the same time I am marking as Guild

Exhibit No. 2 another one-page document with a heading "Writers Credit Record" and in the upper left-hand corner "Olney Sherwood", which is a pseudonym for Robert Blees.

MR. CURTIS: In response to Mr. Mendonsa's offer, I would indicate this. It is the first time we have seen the document. We have no knowledge of its authentication, and we have no knowledge that it is in fact kept in the normal course of business. As a matter more or less of the record, I have no reason to disbelieve Mr. Mendonsa's representations. However, we are not, of course, in a position to stipulate either to its authenticity or its admission.

(A discussion was held off the record.)

MR. CURTIS: I guess we can stipulate that Respondent's counsel will accept Mr. Mendonsa's representation that these do accurately reflect Writers Guild records concerning Mr. Blees' status.

MR. LAVERY: All right. So marked.

MR. MENDONSA: That would be Guild Exhibit Nos. 1, 2, and 3, and then I will offer them into evidence. 1 and 2 would be the Guild's records, the credit records. 1 would be the one marked "Robert Blees." The other one would be "Olney Sherwood", No. 2.

MR. POE: Can we have Guild's 1?

MR. MENDONSA: Yes.

MR. LAVERY: Could we have on the record that the latest, Guild Exhibits 1, 2 and 3 have been accepted in evidence.

MR. MENDONSA: Well, I will offer it at this time to incorporate into this record, as we have in prior cases the

Guild's strike order dated March 5, 1973 and the Rules for the Conduct of Members During a Strike dated February 20, 1973. Does counsel agree to that?

MR. CURTIS: I am afraid I can't. In fact, we would have to object for the record at this point on the grounds that there is no evidence in the record to lay a foundation either that these were sent to the Respondent or that they were received by him.

MR. MENDONSA: Well then, I will make the representation at this time that both of those documents were mailed to every member of the Guild on or about the dates that they bear.

MR. CURTIS: We might make one observation. The document entitled "Attention, Notice to All Members, Strike Order". It is Mr. Mendonsa's representation that this was mailed on or about the date it bears, which would be March 5, 1973. Mr. Blees is charged with crossing the lines possibly, I guess, on the morning of March 6, 1973. I think that this Trial Committee can take judicial notice that the United States Postal Service has deteriorated somewhat in recent years, and unless we have some way of knowing that this was sent out on March 5 and received by Mr. Blees prior to or very, very early on March 6, it would be impossible for us to accept any representation that would imply that Mr. Blees in fact received this order and was bound by it.

MR. LAVERY: Are you prepared to offer testimony that he did not receive it?

MR. CURTIS: We are not prepared to offer testimony

that he did not, with the observation again that we believe the Guild must bear the burden of proof as to whether or not it was sent to him and any inferences as to whether or not it should or would have been received in timely fashion.

MR. POE: I have a question of Mr. Mendonsa. The Rules for the Conduct of Members During the Strike, what was the mailing date on that?

MR. MENDONSA: February 20.

MR. POE: February 20th.

MRS. KALISH: What was the letter of March 5th to which you refer?

MR. MENDONSA: It is the strike order, a notice to all members against whom the Guild was on strike against all the companies.

MR. POE: I think the objection should be overruled because of this Rules for the Conduct of Members During a Strike. Do you have a copy of that?

MR. CURTIS: I do.

MR. POE: If you will look at No. 22 on the third page, it reads:

> "A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts, or telecasts, et cetera,

unless he offers satisfactory evidence that it was impossible for him to receive such strike information."

MR. LAVERY: It has just been pointed out, as to Mr. Blees' having notice. There is already testimony in the record that he and Mr. Levitt went to the Writers Guild meeting the night that the final authorization was opened.

MR. CURTIS: I am certainly aware of that testimony. However, the current controversy, if you will, I think centers around these particular documents.

MR. LAVERY: I don't like to cut counsel short on time, but we have spent so many hours this week on minor jurisdictional matters. We try to get to the heart of the matter. If Mr. Blees was at the Guild meeting that night, it has been so testified. He had ample notice of everything that was going on.

MR. CURTIS: Mr. Emanuel has just pointed out to me, at least a current recollection of the testimony, not that Mr. Blees was present at the meeting but that in Mr. Levitt's testimony, I believe, that they had dinner together and left for the meeting in separate cars. I don't recall, now that my memory is refreshed, any testimony that Mr. Blees was in fact present.

MR. LAVERY: The testimony also indicated that they knew what was going on at the Guild meeting that night. The testimony expressed Mr. Levitt's shock and surprise when he discovered the next day --

MR. ORINGER: May I ask a question of the Chair at this

point. I am at a loss as to what we are deliberating now.

MR. MENDONSA: May I say something. I have offered these in to be incorporated into the record. I feel that they can be received with whatever weight they have. The rest of the testimony is on the record, and the Committee can give that whatever weight it wants also, but I would offer it just as to whatever weight that it may have.

MR. CURTIS: I think that the upshot of it is that we would like whenever possible to stipulate and agree with counsel to shorten this proceeding and avoid acrimony. However, we are simply not in a position to stipulate this.

MR. LAVERY: Well, the Chairman accepts it into evidence with the consent of the Committee. These hearings will last until a hundred years from Christmas if we are to spend hours on what I consider the auxiliary and primary motions. The primary fact is in the evidence collaterally that the Respondent was in the studio.

MR. ORINGER: May I ask a question, Mr. Chairman. I just want to know what this means. In accepting this or any other material into evidence, do I understand correctly that this Committee is not making any comment or decision on the merits or the weight it would accord to the evidence?

MR. LAVERY: It is true.

MR. ORINGER: Thank you.

MR. MENDONSA: With that, the Guild will rest its case.

MR. CURTIS: At this point --

MR. LAVERY: Sorry. I don't like to be interrupting, but one of the members of the Committee has a request that

she has been wanting to ask, and I requested that she please hold it until the counsel is ready to speak up for the Respondent. Again, I don't mean to preempt you in the slightest degree, but this is a question that she has been meaning to ask for some time.

MRS. KALISH: We know you are appearing here in behalf of the Respondent, but may we ask whether you have been retained by Quinn Martin Productions or Warner Bros. or Mr. Blees.

MR. EMANUEL: I will respond to that, Mr. Chairman.

MR. LAVERY: Yes.

MR. EMANUEL: The reason for the discussion before responding was whether we should invoke a privilege and not respond, but we have decided that this is not necessary. We have been retained directly by Mr. Blees, the Respondent to represent him in this matter and not by Quinn Martin.

MR. LAVERY: Thank you very much.

MRS. KALISH: Thank you.

MR. LAVERY: Mr. Curtis?

MR. CURTIS: At this point, the Guild having rested, the Respondent would move to dismiss the charges against Robert Blees. Specifically, at no point through direct testimony or otherwise has the Guild proved that Mr. Blees did the specific thing that he is charged with, and let me refer specifically:

> "You are charged with having crossed a Guild picket line at Samuel Goldwyn Studios on or about March 6, 1973."

The initial witness testified to the establishment of a picket line but further testified on cross-examination that he did not observe Mr. Blees that day and obviously had no personal knowledge as to whether or not Mr. Blees crossed the picket line. The second witness, the then producer of the BARNABY JONES show, testified that he talked to Mr. Blees and that Mr. Blees indicated that he was at Quinn Martin. However, there was no testimony that Mr. Blees in fact crossed a Writers Guild of America picket line at that time. The testimony of the initial witness establishes that the hours of picketing were limited. The picket line was set up, I believe, at 6:00 A.M. in the witness's testimony and obviously did not continue indefinitely throughout the night. There is --

MR. LAVERY: Excuse a footnote.

MR. CURTIS: Yes.

MR. LAVERY: This Committee on the specific point by previous panels has taken the position that once the premises are struck, the picket line is in effect, regardless of the number of the hours or the pickets. It is like a restraining order from a court of competent jurisdiction. That has been the consistent attitude of the Committee in previous hearings. Again, I am sorry to interrupt.

MR. CURTIS: I think we certainly understand the Committee's position while respectfully disagreeing with it. The motion simply goes to dismissal for failure by the Guild to prove its prima facie case based upon the specific charges against Robert Blees, that is in fact, that he did

in fact cross a Guild picket line. To the extent that he is charged with destructive crossing of the picket line or the offense of violating the restraining order of the Guild, those are not contained in the charges within. In Article 10 of the Constitution of the Guild, it indicates that the member being charged must be served with specific charges, including facts, dates, et cetera, where possible. He was not charged with any offense other than, as again to quote, "crossing a picket line," and there has been no direct evidence of that produced during the Guild's case in chief. Therefore, at this point we would move to dismiss the charges.

MR. LAVERY: Mr. Mendonsa?

MR. MENDONSA: There was evidence that there were picket lines at all gates at the studios on March 6, 1973 for a period of 12 hours from 6:00 A.M. to 6:00 P.M. There was also testimony that Mr. Levitt had a telephone conversation with Mr. Blees in which he admitted that he was in fact in the studios on that day performing work. I think it is a simple assumption to make that he in fact did work behind the picket lines on that day, and it is not being unreasonable to assume then that he did cross the lines to get to work, either to or from.

MR. LAVERY: The motion is denied.

MR. CURTIS: At this point for the Respondent's initial presentation, we would offer to the Trial Committee a declaration executed this date by Robert Blees. I will give Mr. Mendonsa a copy and obviously the time to review that

declaration.

MR. LAVERY: Following our rulings of yesterday, unless I hear contrary voices from the Committee, we did not make a decision yesterday on the acceptability of a written statement in evidence in a case that still continues until Monday. That doesn't stop this Committee from making it a formal resolution in the matter, but yesterday these statements signed but not notarized, not made under oath --

MR. CURTIS: I might point out that this statement is made under oath.

MR. LAVERY: Oh, excuse me.

MR. CURTIS: It is a declaration, an affidavit under oath.

MR. LAVERY: But not subject to cross-examination?

MR. CURTIS: That's correct, sir.

MR. LAVERY: Although yesterday the Committee sitting did not read the statement in order to be able to rule properly, that is, not to read it and then rule on it.

MR. CURTIS: I understand.

MR. LAVERY: In yesterday's hearing, the statements were returned to counsel for the then Respondent pending on ruling on Monday.

MR. POE: May I ask a question?

MR. CURTIS: Yes, sir.

MR. MENDONSA: Well, I will object to the admission of the statement into evidence simply because it is hearsay. It does not give us the opportunity to cross-examine the witness at all with respect to the statements made therein.

If the witness wants to take the stand, as it were, to testify to these matters, then I think it would be perfectly proper for him to do so, but he would at that point be subject to cross-examination of the Guild and this Committee, and I think that this would be establishing a precedent which could be harmful to the inner workings of this Guild to allow self-serving documents to be presented in defense of the Respondent.

MR. CURTIS: If I might respond at this point, Mr. Chairman. Ladies and gentlemen, as Mr. Mendonsa very articulately pointed out during the presentation of his case in chief over our objections to certain portions of the testimony, Article 10 of the Guild Constitution indicates that this Trial Committee is not bound by the formal rules of evidence. The assumption, I think, that can be readily drawn from that is that any evidence which would tend to be relevant presumably is admissible, and the only assumption I can draw from that, having had approximately five years experience with administrative law and with administrative adjudications, is that the reasonable interpretation of that provision of Rule 10 is that hearsay is admissible for whatever weight it may have. I might point out that this statement is made under oath, and I might also point out that during the Guild's case in chief, hearsay evidence was in fact admitted by the Trial Committee over the Respondent's objections.

MR. MENDONSA: May I just state the distinction that I draw, and I do not argue that hearsay evidence is

inadmissible before this tribunal. But I do urge that this Committee does have the authority to formulate its own rules with respect to the admission of evidence and that it should be in this type of situation where evidence is being offered, hearsay evidence, that it should be denied when there is no one to even question about the statements made in the hearsay evidence. At least the hearsay evidence that has been offered and admitted so far, the proponent of the evidence has been here and subject to cross-examination. Nothing has really been offered except an explanation that upon advice of counsel this witness has not appeared. I see no reason that he cannot appear and make the statements that he has made in the offer that has been made.

MR. ORINGER: May I ask counsel a series of questions here. Number one, if the Trial Board admits this document into evidence, does that mean that we are thereby commenting on its merits in any way?

MR. MENDONSA: Not necessarily. However, I think to really test the weight of the evidence, the Trial Committee, as well as the Guild, should have the opportunity to cross-examine with respect to what the witness stated.

MR. ORINGER: That is not my question. If we admit this document into evidence, does that mean thereby that we are making some comments or statements as to its merit or weight?

MR. MENDONSA: No, but I suspect that some weight would be given to the document if it were to be admitted into evidence.

MR. CURTIS: I simply have a couple of comments that I would like to make, unless --

MR. ORINGER: On that question, because I have a series of questions that are connected to each other?

MR. LAVERY: I think we should take a caucus right away rather than argue our specifics with counsel. I don't mean to shut you off. I think we should hear counsel, and then I think we should adjourn.

MR. ORINGER: May I continue with just this series? I am just trying to elicit some response. I don't want any argument on this. When you make your comment that this board -- and again I just want your opinion on this -- when you make out that this board has the right to make its own rules, is it with the understanding that they are in fact bound by the rules set forth in the Guild Constitution, that we are limited in making our rules by the Constitution, where the Constitution applies?

MR. MENDONSA: Well, yes, to the extent that the Constitution makes any limitations, you would be bound by those limitations. However, in the admission of evidence, the authority given to this Committee is most broad.

MR. ORINGER: The third question, I am aware -- and please correct me if I am wrong -- that the Guild Constitution grants the Respondent the right to present evidence, and I think I am quoting either verbatim or almost verbatim. Now, at the same time I am not aware of any limitation in the Constitution on the manner in which that evidence may be presented, nor am I aware of any reference to the submission

of written testimony without the accompanying witness's presence. Now, can you enlighten me as to whether those restrictions do in fact exist?

MR. MENDONSA: No. There are no restrictions. What the Constitution says in Article 10, Section 6, among other things, is that a record shall be kept of the proceedings, but the testimony produced may not be under oath, nor shall the Committee be bound by any rules of evidence applicable in courts of law. So it would be clear that this Committee can make its own rules with respect to the admission of evidence. However, all I am doing is urging in this particular case that the Committee does not allow the testimony of the Respondent to come in in the form of an affidavit. There is no way in which we can look behind the statements that are made. They are conclusionary types of statements, and they should be looked into further. Now, to set a precedent that would allow, this would be depriving this Committee of its right to look into the facts.

MR. ORINGER: John, I understand what you are urging, and we are going to take that into consideration, but the question that I asked was this. Does the Constitution in any way limit or further define the statements wherein it says a member has a right to offer evidence? Does the Constitution make any --

MR. LAVERY: He answered the question. As Chairman I am going to rule that we adjourn and discuss in executive session the detailed questions. All in favor say "aye".

THE TRIAL COMMITTEE: "Aye".

MR. CURTIS: Subject to that motion that I believe was passed to adjourn, might I still get on the record my immediate response that the Committee has under consideration?

MR. LAVERY: Yes. I didn't mean to foreclose you.

MR. CURTIS: First, the declaration, there is no substantive distinction as self-serving. I think obviously any evidence that the Respondent is going to submit on his behalf is by its nature self-serving. Secondly, the commentary was made on the fact that the Respondent is not present. Directing my comments specifically to the Chairman, as an attorney, I believe it should be understood, or could be understood, that this is, of course, his right. He has a right to appear, but conversely he has a right not to appear.

As to a lack of the right to cross-examination, we certainly had the right to cross-examine the witnesses who testified here, but we did not have the right or the ability to cross-examine the hearsay declarants, whose statements were being repeated by those witnesses, and to test the truth or falsity of the statements made by the original hearsay declarants. I may also point out that under the Guild Constitution the testimony given by the two witnesses who testified on behalf of the Guild was not given under oath. To the extent that the declaration of Robert Blees is given under oath under penalty of perjury and thereby subjects himself under the California Penal Code to a one-to-seventeen-year prison sentence if he is proven guilty of perjury, it is in fact entitled to a greater weight than the testimony of the preceding two witnesses. Finally,

let me comment on this. The Guild certainly within reasonable limitations established by its Constitution does have the right to establish evidentiary rules and procedures. However, during the Guild's case in chief, those evidentiary rules and procedures with a right to exercise them and establish them was not done in such a way that hearsay testimony was admitted over objection. Now certainly, even assuming that the provisions of Article 10 themselves cannot be read or would not be read, to automatically allow hearsay testimony in, we would submit, that to allow it in during the Guild's case in chief and to exclude it during the Respondent's case in chief goes beyond the authority of the Trial Committee. That is, it would be an exercise of authority to pass and enforce evidentiary rules in an arbitrary manner, an arbitrary and capricious manner, if you will, without implying that the Trial Committee has or would do that.

MR. LAVERY: The Committee will take that under consideration.

(A discussion was held off the record.)

MR. LAVERY: We are on the record. Before resuming, the Committee has asked me to ask if we could have for the record the identification of the potential witness who has been here this afternoon.

MR. CURTIS: Miss Juliet Nethercott.

MR. LAVERY: How do you spell that?

MR. CURTIS: N-e-t-h-e-r-c-o-t-t.

MR. LAVERY: Is that a writer?

MR. CURTIS: No.

MR. POE: Can you identify her for the record?

MR. CURTIS: She is or was, during the relevant times, Mr. Blees' personal secretary.

MR. LAVERY: The ruling of this panel is that the statement offered under penalty of perjury will be admitted into evidence.

MR. CURTIS: Thank you, sir. We have the original here for submission.

MR. MENDONSA: Will you mark this as Respondent's 1?

MR. CURTIS: Respondent's 1.

MR. ORINGER: Do we have copies of this?

MR. CURTIS: Would you like additional copies? I do have some additional Xerox copies of it, if it would be of some assistance to the Trial Committee.

MR. LAVERY: Are you ready to proceed?

MR. CURTIS: Can I have just one more minute, please.

MR. LAVERY: Yes.

MR. CURTIS: Mr. Chairman, with the acceptance of the declaration of the Respondent Robert Blees, the Respondent at this point will rest its case.

MR. MENDONSA: I have nothing further.

MR. LAVERY: Does the Committee have any questions?

MR. POE: You have stated that you are retained by Robert Blees. Are you also retained by Quinn Martin and/or Warner Bros. in any other capacity?

MR. EMANUEL: I will respond to that. No, we are not.

MR. ORINGER: This is again a general question, and it

pertains to this Trial Board's obligation equally to both the Guild and the member involved. For whatever relevance it may or may not have, I personally feel the absence of the member. I would like to be in a position to ask him questions and get the answers to specific questions. I am not questioning in any way his right not to be here, but in his absence I would like to ask you as his representatives if you have anything you would wish to offer, whether as a comment, opinion, or fact, in any way related to a defense in this instance that we can include in our deliberations?

MR. CURTIS: At the time the closing arguments are opened up or are appropriate -- and I assume the record of these proceedings does indicate closing arguments have been accepted -- we certainly will have comments on Mr. Blees' behalf. I don't want to leave the impression with you or with anybody else on the Committee that we are treating this in a cold, sterile vacuum, that there are not some very deep issues, some very substantive things involved in this, so certainly we will have some commentary at that point, yes, sir.

MR. LAVERY: When are you prepared to make your closing arguments, Mr. Curtis? Anytime?

MR. CURTIS: Immediately.

MR. POE: Well, before you do, Mr. Curtis, there was a person sitting in the room identified as Mr. Blees' secretary. I was under the impression she would be introduced as a witness, because we have a very strict rule about outsiders who are not witnesses being present at these hearings for

very clear and obvious reasons. I understand that she is in a particular position to bear tales back to Mr. Blees, which could make him very unhappy and perhaps alienate his relationship to all the members of this panel. Now, are you going to introduce her as a witness?

MR. CURTIS: We are not. She was present as a potential witness. There was no attempt to deceive or otherwise violate the rules of this Committee concerning the closed nature of this hearing. I as much as anybody, of course, am aware of the closed nature of the hearings.

MR. POE: Has she left the premises?

MR. CURTIS: Yes, she has. Having been present, it was an honest, good-faith attempt to produce alternative evidence, in the event that the declaration of Robert Blees, which we feel establishes the same facts, was rejected by this Committee. Given its acceptance by the Committee, the Respondent has chosen not to call her as a witness. This was clearly a last-minute decision on the Respondent's part.

MR. POE: The statement is so bald as to put us in a very peculiar position. We would like to ask questions about it. I know that you are not in a position to answer the questions, and the secretary might be able to, but she has left the premises.

MR. CURTIS: Yes, sir.

MR. LAVERY: Mr. Mendonsa, would you like to make a closing statement for the Guild?

MR. MENDONSA: Well, again, very briefly, the Guild has shown through the evidence that there were picket lines

established at Samuel Goldwyn Studios on the date of March 6, 1973. That Mr. Blees did enter the studios and perform work for QM Productions on that date, and I believe that you will find, although there may not have been direct testimony, that he crossed the line, that the circumstances would dictate that a conclusion be drawn that he did cross the line within the 12 hours, at least one way or the other within the 12 hours, of the lines as established on the 6th of March. Having found that, I think that you must conclude, therefore, that he did violate the Rules for the Conduct of Members During a Strike dated February 20, 1973, specifically those sections designated as 12 and 13.

MR. CURTIS: I apologize for the interruption. We received a message that somebody was on the phone and then got embroiled in the questions involving Miss Nethercott. Mr. Emanuel is going to see if the party is still on the line.

(Mr. Emanuel left the conference room at this point.)

MR. CURTIS: The simple fact is that there are contractual obligations that a person owes under employment contracts for which he may or may not be liable to responsibility and damages. We would hope on Mr. Blees' behalf that you would view him as a man very much caught in the middle, a man obviously with deep moral convictions, and yet moral convictions that to some extent might have to be reconciled in the interests of either the Guild or his employer. I would point this out also, although I am not at this point directly arguing the evidence. I think the informal nature of this

hearing warrants it. Mr. Blees has a long-standing and honorable history of membership in the Writers Guild of America. To my knowledge Mr. Blees has been a member of this Guild since approximately 1940. To my knowledge Mr. Blees was also instrumental in setting up this Guild's pension plan and in fact was honored by the Guild for his services to this Guild in setting up that pension plan.

In conclusion, let me say this. There are obviously very deep and very substantial differences right at this time in history between the Writers Guild of America and a number of other parties. I would hope and ask that those differences not influence and not have any part in this Guild's decision. In other words, that the short-run -- if I may characterize it as that -- is that the short-run economic considerations inherent in the current negotiations and in the current strike not color your decision when you remember that you do have a man's career at stake. You have Mr. Blees' credit record. He is a writer. He does write. This is at least a part of Mr. Blees' career. That, I believe, will conclude the Respondent's statement.

MR. LAVERY: Mr. Curtis, the Committee will take all this under consideration, making now as always its best efforts to be as absolutely impartial as it can in the circumstances.

As usual in these hearings, the concluding paragraph should take into account that the matter will be taken under submission by this Trial Committee. After this Committee has deliberated, it will submit its written

recommendation as to guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors who, under the Guild's Constitution and By-Laws, have the authority to either accept, reject or modify this Committee's recommendation.

In order for this Committee to make a recommendation of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the Respondent be acquitted of the charges.

There being nothing further, this hearing is adjourned.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, PETER M. RUNKLE, Notary Public for the State of California, certify:

That the foregoing Hearing of Robert Blees was taken before me at the time and place therein set forth;

That the testimony and all objections made at the time of the hearing were recorded stenographically by me and were thereafter transcribed;

That the foregoing Hearing of Robert Blees is a true record of the testimony and all objections made at the time of the hearing.

In witness whereof, I have subscribed my name and affixed my seal this 18th day of June, 1973.

Peter M. Runkle
Notary Public in and for the
State of California

OFFICIAL SEAL
PETER M. RUNKLE
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Apr. 26, 1977

DECLARATION OF ROBERT BLEES

I, ROBERT BLEES, say and declare as follows:

1. I am a member of the Writers Guild of America, West, Inc. (WGA), and have been a member of such Guild since approximately 1940 . . ., and have previously served as a member of such Guild's Executive Board, and am a Founding Trustee of the WGA Pension Plan - having served in such capacity for ten years.

2. At the inception of a strike by WGA on or about March 6, 1973, I was employed by Quinn Martin (Q.M.) Productions, Inc. in the capacity of "Executive Story Consultant" for the "Barnaby Jones" television series, produced at Samuel Goldwyn Studios in Los Angeles, California.

3. As of March 6, 1973, I advised Q. M. Productions and WGA that during the pendency of the WGA dispute, I would refrain from any and all activities involving the writing, rewriting, or editing of scripts and stories; conversations with writers or their agents concerning professional employment matters; and any and all other activities concerned with the writing of scripts and stories, and I did, in fact refrain from such activities.

I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 31st day of May, 1973, at Los Angeles, California.

ROBERT BLEES

Respondent #1

DECLARATION OF ROBERT BLEES

I, ROBERT BLEES, say and declare as follows:

1. I am a member of the Writers Guild of America, West, Inc. (WGA), and have been a member of such Guild since approximately 1940 . . ., and have previously served as a member of such Guild's Executive Board, and am a Founding Trustee of the WGA Pension Plan - having served in such capacity for ten years.

2. At the inception of a strike by WGA on or about March 6, 1973, I was employed by Quinn Martin (Q.M.) Productions, Inc. in the capacity of "Executive Story Consultant" for the "Barnaby Jones" television series, produced at Samuel Goldwyn Studios in Los Angeles, California.

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I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 31st day of May, 1973, at Los Angeles, California.

Robert Blees

ROBERT BLEES

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

In the Matter of	)
WRITERS GUILD OF AMERICA, WEST, INC.,	)
-vs-	)
JOHN T. MANTLEY,	)
Respondent.	)

gc IGN

HEARING OF JOHN T. MANTLEY

Los Angeles, California

June 11, 1973

Reported by:

THEDA MOSS, CSR

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.,

vs.

JOHN T. MANTLEY,

Respondent.

INTRAUNION DISCIPLINARY HEARING OF JOHN T. MANTLEY, heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Inc., at 8955 Beverly Boulevard, Los Angeles, California, commencing at 10:15 A.M., Monday, June 11, 1973, before Theda Moss, CSR, Notary Public.

APPEARANCES:

FOR WRITERS GUILD OF AMERICA, WEST, INC.:

JOHN A. MENDONSA, ESQ.
Resident Counsel, WGA
8955 Beverly Boulevard
Los Angeles, California 90048

FOR RESPONDENT:

MUSICK, PEELER & GARRETT
BY: LARRY A. CURTIS, ESQ.
WILLIAM J. EMANUEL, ESQ.
One Wilshire Boulevard
Los Angeles, California

BEFORE:

EMMET LAVERY, Chairman

JAMES POE

BARRY ORINGER

JACK ELISON

MILLARD KAUFMAN

I N D E X

WITNESS:

	DIRECT	CROSS	COMMITTEE
JOHN FURIA, JR.	10	15	15
SIDNEY ELLIS	28		
ALAN GRIFFITHS	32		
PAUL DUBOV	41		

E X H I B I T S

Trial Committee Number	IDENTIFIED	IN EVIDENCE
1 through 7	6	35
Guild Number		
1 and 2	35	35
3	35	37
Respondent Number		
1	38	39
2	39	40
3	40	41

INFORMATION TO BE INSERTED:

(None)

LOS ANGELES, CALIFORNIA; MONDAY, JUNE 11, 1973; 10:15 A.M.

CHAIRMAN LAVERY: Are we all here, John?

MR. MENDONSA: Yes.

CHAIRMAN LAVERY: Are we ready to proceed, gentlemen?

MR. CURTIS: Yes.

MR. MENDONSA: Ready.

CHAIRMAN LAVERY: Well, then, we are on.

The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus John Mantley.

The matter is being heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Incorporated.

The members of the Trial Committee are Jack Elison, James Poe, Millard Kaufman, Barry Oringer, and myself, Emmet Lavery, as Chairman.

Will the parties please state their appearances for the record.

MR. MENDONSA: John A. Mendonsa, M-e-n-d-o-n-s-a, appearing on behalf of the Executive Director of the Writers Guild of America, West, Inc.

CHAIRMAN LAVERY: For the Respondents?

MR. CURTIS: Larry A. Curtis and William J. Emanuel of Musick, Peeler & Garrett for the Respondent John Mantley.

CHAIRMAN LAVERY: Introduction of Trial Committee exhibits.

Mr. Mendonsa, do you want to --

MR. MENDONSA: Right.

Trial Committee Exhibit No. 1 is the two-page copy of the charges that were served on Mr. John Mantley with a cover letter dated April 14, 1973, with the return receipt attached thereto.

Trial Committee's Exhibit No. 2 is a letter dated 24, 1973, addressed to John A. Mendonsa signed by J. M. Hendler of Hendler, Kranitz & Sarrow. The letter requesting a continuance of the hearing for at least ten days.

Trial Committee's Exhibit No. 3 is a letter dated April 27, 1973, addressed to J. M. Hendler, Esq., signed by John A. Mendonsa. It is a two-page document. It is granting a continuance to May 18, 1973.

Trial Committee's Exhibit No. 4 is a letter dated May 10, 1973, addressed to John A. Mendonsa signed by Larry A. Curtis. It is a one-page document. It is advising that Larry A. Curtis, of the law firm of Musick, Peeler & Garrett, has taken over representation of John Mantley, and has requested a continuance of at least two weeks.

Trial Committee's Exhibit No. 5 is a letter dated May 11, 1973, addressed to J. M. Hendler, signed by John A. Mendonsa. It is a one-page document advising that the trial date is set for May 25, 1973.

Trial Committee's Exhibit No. 6 is a letter dated May 16, 1973, addressed to John A. Mendonsa, signed by Larry A. Curtis. It is an acknowledgment that the date has been continued to May 25, 1973.

Trial Committee's Exhibit No. 7 is a letter dated May 16, 1973, addressed to Larry A. Curtis signed by John A. Mendonsa and it is a letter stating that the date has been set for Friday, June 1, 1973. Subsequently there was an understanding that the date would be continued to this date.

We offer these as the Trial Committee's Exhibits 1 through 7.

MR. CURTIS: We would ask at this point that they simply be noted for identification pending receipt and pending the making of certain preliminary motions by the Respondent, as the Chairman is aware has been done in numerous previous cases.

CHAIRMAN LAVERY: Is that agreeable?

MR. MENDONSA: Sure.

CHAIRMAN LAVERY: For the present they will be marked for identification.

(Trial Committee's Exhibits 1 through 7, inclusive, as hereinbefore described, were marked for identification.)

MR. POE: Before the motions are made, I would like to hear what the charges are.

MR. MENDONSA: I will read the full charges which were sent to Mr. Mantley dated April 14, 1973.

(Reading)

"Notice of disciplinary hearing and charges:

Please take notice that pursuant to Article X, Sections 1, 5, and 6 of the

Constitution and By-Laws of the Writers Guild of America, West, Inc., a hearing on the charges made herein will take place on the 4th day of May, 1973, at 2:00 P.M. at the offices of the Writers Guild of America, West, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

"Notice is hereby given that you are charged with violation of the Guild's strike order and Sections 1, 12, and 13 of the Rules for the Conduct of Members during a strike dated February 20, 1973, which reads as follows:

"'Section 1: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.'

"'Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.'

"'Section 13: Members are prohibited from entering premises of any struck producer for the purpose of discussion of the sale of material or contract of employment regardless of the time at which it is to

take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot, or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing, he should inform the Guild in advance of the nature of such prospective visit.'

"Specifically, you are charged with having crossed the Guild's picket lines at CBS Studio Center during the month of April 1973, for the purpose of rendering services for Columbia Broadcasting System, Inc., against whom the Guild was at such time on strike."

It goes on:

"You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf, and to cross-examine any witnesses who shall testify in support of the charges."

CHAIRMAN LAVERY: Gentlemen, before proceeding with the

opening motions -- I presume there are motions prior to statements -- it is the hope of the Committee that without shutting off counsel in any degree, that the preliminary motions, if they are familiar in pattern to motions in recent proceedings, would be summarized as briefly as possible.

We find that we are giving more and more time to the consideration of motions that deal basically with -- well, one set with jurisdiction; the other sometimes with corrections in pleadings. And while we are not in a position perhaps to use the rules of practice followed in some of the Federal Courts where these motions are submitted in advance in writing, we do give the prayerful hope that the motions as to jurisdiction and as to changes, if any, in the pleadings can be as briefly stated as possible.

MR. MENDONSA: Mr. Chairman, I have a problem with one of my witnesses, and I would ask leave of this Committee to present the testimony of this witness at this time. Mr. Furia, who is here to testify in this matter, is also scheduled to testify at the NLRB hearing at around 10:30.

If it would be possible to get his testimony in at this time so we could excuse him to go to the NLRB, it would be most appreciated.

CHAIRMAN LAVERY: Well, I am sure that as far as the Committee is concerned, we would be happy to take the witness out of order.

Is there any serious objection from counsel for the Respondent?

MR. CURTIS: I assume the Respondent could agree that

the witness's testimony would be admitted subject to being struck if one or more of the motions that will be made are granted or if for any reason the testimony of the witness does not appear relevant to this hearing.

CHAIRMAN LAVERY: Well, I see no objection to that.

Mr. Mendonsa.

MR. MENDONSA: Yes. We would call our first witness, John Furia, Jr.

JOHN FURIA, JR.,
called as a witness by and on behalf of the Guild, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

Q Mr. Furia, will you state and spell your name for the record.

A I am John Furia, Jr., spelled F-u-r-i-a.

Q Mr. Furia, are you a member of the Writers Guild of America?

A Yes, I am.

Q How long have you been a member of the Guild?

A Since 1959.

Q Are you presently the President of the Writers Guild of America, West, Inc.?

A I am.

Q Approximately how long have you held that position?

A. Since May 17th.

Q. Did you hold any office prior to that time?

A. Prior to that time I had been President of the Television-Radio branch of the Guild.

Q. Now, you of course are acquainted with the fact that the Guild is on strike and has been since March 6 of 1973?

MR. CURTIS: Objection. Number one, the question is leading; number two, the date as to CBS, I believe, is a misstatement. I believe that the strike as to the various parties in this action was initiated at different times.

MR. MENDONSA: I don't contend that the question is not leading, but I think it is a question that everyone knows the answer to. I will, however, go into the latter portion of that.

Q. Mr. Furia, are you acquainted with the fact that the Guild is on a strike against CBS?

A. I am.

Q. Do you know approximately how long that strike has been against CBS?

A. Several months.

Q. Now, during the course of the strike have you had occasion to call persons who have been in apparent violation of the Guild's Strike Rules or Strike Order?

A. Yes, I have.

MR. CURTIS: Objection. Calls for a conclusion of the witness.

CHAIRMAN LAVERY: I think we will have to overrule it

in order to get on with the story.

Q. BY MR. MENDONSA: Have you had occasion to contact or call persons who have been alleged to have been in violation of the Guild's Strike Order or Strike Rules?

A. Yes, I have.

Q. Now, directing your attention to on or about April 5, 1973, did you have occasion to call Mr. John Mantley?

A. Yes, I did.

Q. Will you tell us what occasioned your call to Mr. Mantley?

A. I had been told by several people --

MR. CURTIS: Objection. The witness is testifying as to hearsay.

CHAIRMAN LAVERY: Well, considering we are not operating under the strict Rules of Evidence, I will take the liberty of overruling the objection.

THE WITNESS: I had been told by several people that Mr. Mantley was at work at CBS.

Q. BY MR. MENDONSA: Now, when you called Mr. Mantley, where did you call him?

A. I called him at the studio, CBS Studio Center in Studio City.

Q. Did Mr. Mantley answer the phone?

A. I don't recall if he did directly. I believe it was his secretary.

Q. Did you ask for Mr. Mantley?

A. I did.

Q. Did Mr. Mantley come to the phone?

A. He did.

Q. Did you recognize Mr. Mantley's voice?

A. Yes. I have known Mr. Mantley over a period of time, having spoken with him a number of times on the telephone as well as in person, and he has a rather distinctive voice. I'd recognize him immediately.

Q. All right. Mr. Furia, will you tell us precisely what you said to Mr. Mantley and what Mr. Mantley said to you in that telephone conversation.

MR. CURTIS: For the record, we will object to the question. It requests hearsay.

CHAIRMAN LAVERY: The objection is overruled.

THE WITNESS: When I spoke to Mr. Mantley that was on a very informal and cordial basis. As I have stated, I know him. And I told him that I had heard that he was at work and I was concerned, not only personally but because I believed he was well-known as a rather important hyphenate member of the Guild, and that I was concerned that he understood what the Guild's position was in this situation and what the consequences might be for himself.

I told him that I -- I don't remember the exact conversation in terms of language, but the purpose of my call was to be certain that he did understand what the Guild's Strike Rules were in terms of his circumstances.

And I satisfied myself that he did understand the Guild's Strike Rules, and I wanted to be certain that he understood the consequences of going to work and crossing

the picket line and disobeying the Strike Orders, that these consequences might be very serious for him.

He did understand that. He said that he did understand, but that he had come to a conclusion based on several things.

As I recall, first because he was working for the network and, second, that the show which he produces, namely, "Gunsmoke," had an earlier production schedule than most of the other shows in town and that therefore he felt compelled to go back to work and to honor his commitment to the company.

I told him that the consequences -- aside from the formal ones of Guild discipline -- the consequences might be damaging to him professionally because many people such as myself would take the fact that he had violated our Strike Orders unkindly.

I don't recall exactly the way I put it, but something of that nature.

That was the substance of our conversation.

Q BY MR. MENDONSA: Did you have any further conversations with Mr. Mantley after that time?

A I have seen him several times since then and on occasion talked about this same -- about both those two subjects with him.

Q In that telephone conversation he did indicate to you that he was producing on the series "Gunsmoke"?

A He did.

MR. MENDONSA: I have no further questions.

CROSS-EXAMINATION

BY MR. CURTIS:

Q Mr. Furia, you indicated on the phone conversation with Mr. Mantley that he indicated a commitment to the network. Did he indicate any commitment in his opinion to the Producers Guild?

A He at one point -- I don't honestly recall whether it was in that conversation or subsequently -- he did talk to me about his position as a potential officer of the Producers Guild. I don't believe he brought it up in that conversation or in the context of his crossing -- of his going back to work. I don't believe he did.

Q Did he indicate that he had a contractual commitment to CBS that he was bound to fulfill as far as his contract?

A He indicated he had a contractual commitment to CBS and, yes, that he felt bound to fulfill it.

MR. CURTIS: Nothing further.

CHAIRMAN LAVERY: Do any of the Committee members have any questions?

(No response.)

CHAIRMAN LAVERY: If not, I guess Mr. Furia is excused.

MR. POE: I have one.

CHAIRMAN LAVERY: Oh, excuse me.

EXAMINATION

BY MR. POE:

Q Did the subject of picketing come up? That is, a

picket assignment?

A Not to my recollection, no.

MR. POE: Okay.

CHAIRMAN LAVERY: Mr. Furia is excused.

THE WITNESS: Thank you.

(John Furia, Jr. left the hearing room.)

CHAIRMAN LAVERY: Now, to resume, do we hear Mr. Mendonsa first or in the ordinary approach this would be the time for opening statements or motions.

I take it, Mr. Mendonsa probably has no motion, but he undoubtedly has an opening statement.

MR. CURTIS: I think normally the motions would precede the opening statements.

CHAIRMAN LAVERY: In that case --

MR. MENDONSA: You go ahead with the motions.

MR. CURTIS: Excuse me.

(Discussion held off the record between Mr. Curtis and Mr. Emanuel.)

MR. CURTIS: We are mindful of the Chairman's comments that the Trial Committee has heard the same or similar motions in a number of prior hearings and certainly although we will make the motions as fully as we think need to be made to protect the interests of our client, we will try not to expand on them with a lot of flowery prose unless there are specific questions directed to us.

The No. 1 motion -- and as I recall, it is a preference of the Trial Committee that the motions be

designated by number -- the No. 1 motion would be a motion to dismiss.

This is based on the grounds that in prior communications with the Writers Guild, the identity of the five-man Trial Committee required to be appointed by the Guild's Constitution was requested.

In response to that eight names were supplied to the Respondents through their counsel and there would be a motion to dismiss on the grounds that, number one, the provisions of the eight names at that time does not satisfy the requirement under the Guild's Constitution that five members be appointed and, secondly, that the five members present on today's Trial Committee -- I believe Mr. Elison, Mr. Kaufman, and Mr. Oringer -- were individuals whose names were not supplied to the Respondent; and the Respondent, therefore,had no opportunity to check into the background, if you will, and to possibly prepare for voir dire concerning any possible bias or conflict which would result in them sitting other than strictly as a Guild member under the terms of the Guild's Constitution.

CHAIRMAN LAVERY: Will it expedite matters if we have an immediate ruling on the motions as we go, or would you prefer the Committee would consider all motions?

MR. CURTIS: We would prefer that the record reflect a ruling on each motion as it is made, at that time.

CHAIRMAN LAVERY: Well, unless there are objections from the Committee, the motion to dismiss is denied.

MR. CURTIS: The second motion is a request for

clarification of the charges based upon statements and affirmative allegations of counsel for the Writers Guild of America, West, Inc., in two pending -- in fact, two matters currently being conducted before the National Labor Relations Board, cases Nos. 31 CD 1203-3 and 31 CD 1223.

Specifically, the counsel for the Guild in those matters has previously affirmatively alleged that disciplinary action is being maintained against certainly hyphenate members of the Guild only to the extent that those certain hyphenate members cross picket lines and perform struck work, that is writing after crossing such picket lines.

The charges against the Respondent in this matter do not indicate the charges conform to the affirmative allegations of counsel in that proceeding; and we would accordingly request clarification of the charges at this time.

CHAIRMAN LAVERY: In this, as in similar hearings, your request for clarification is denied.

MR. CURTIS: Well --

MR. MENDONSA: Well, let me make the -- I will make a clarification. There is no problem with that.

The pleadings that Mr. Curtis refers to is the answer that was originally filed in the NLRB hearing. That answer was never sent to the Respondent in this case.

The answer, upon the first day of hearing, which was approximately three weeks ago, was amended to allege or to admit that disciplinary action was being brought against anyone who had crossed the picket line to perform

services of any kind. And that is essentially the charge that was made in this case; that charges were brought against Mr. Mantley for having crossed the picket line to render services.

The charges remain the same today as they did when they were first sent out.

CHAIRMAN LAVERY: Mr. Curtis.

MR. CURTIS: Thank you, sir.

The No. 3 motion is a request for a copy of the charges originally filed with the Executive Director of the Writers Guild under Article X, B., Section 1 to allow the Respondent to determine whether or not those charges conformed with the requirement under Section 5 that a copy be served and also to determine who filed the charges.

Specifically, the lack of the availability of such original charges detracts from the ability to adequately prepare for defense in this matter and also we feel significantly mitigates against the Respondent's right of confrontation in not knowing the persons charging him with violations of the Guild's rules.

CHAIRMAN LAVERY: Mr. Mendonsa.

MR. MENDONSA: May I ask a question, Mr. Curtis: Do you intend to incorporate the motions and the arguments made on behalf of those motions both pro and con that were made in the Blees case?

MR. CURTIS: I would indicate this, that there will be a substantial similarity in a number of the motions, although others will be different. We would hesitate to incorporate

by reference any of the motions made in the Blees matter.

As I indicated, we will try to make them as expeditiously as possible.

MR. MENDONSA: Well, this matter has been argued before this Committee many times, and I will simply not make the arguments over again. I think it is well in the minds of the Committee at this time.

CHAIRMAN LAVERY: Well, the ruling of the Committee is in the negative.

MR. CURTIS: The next motion, No. 4, is a motion to dismiss on the grounds that the Trial Committee lacks jurisdiction to discipline a member for actions performed in his capacity as an executive or as a supervisor; specifically John Mantley as an executive producer is responsible for both executive and supervisory duties for his employer CBS, and the Guild therefore lacks jurisdiction to discipline him for performance of those supervisory and executive duties.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Again I will simply rely upon the arguments made in prior cases.

CHAIRMAN LAVERY: Well, in this, as in other hearings, the ruling of the Committee is that the Guild does have jurisdiction.

MR. CURTIS: No. 5 motion is a motion to dismiss for lack of jurisdiction because the work performed, if any, by the Respondent is outside the sphere of writing; and thus is not within either the certification or scope of recognition of the Writers Guild.

In other words, the Writers Guild is neither certified nor recognized to represent executive producers and as such with respect to their duties as executives and as supervisors.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. I just want to make one comment here.

The Guild's position is that it is on strike against CBS and that if any member is rendering services to that struck company that he is in fact rendering aid to the struck company in disregard of the Guild's strike and to its detriment.

CHAIRMAN LAVERY: The ruling upon 5 is the same as the ruling on 4; the Committee is of the opinion that the Guild does have jurisdiction.

MR. CURTIS: The No. 6 motion is, one, the guidance of the Trial Committee, that has also been heard before, the motion to dismiss on the grounds that the Trial Committee as a whole has interests other than those of Guild members per se under Article X, B., Section 4 of the Guild's Constitution and By-Laws because a substantial portion of the membership of this Trial Committee is composed of former officeholders in the Guild who by their nature as former officeholders would be devoting more than average time and energy to the matters affecting the Guild and the protection of what they view as the Guild's interests.

In other words, it is on the grounds that the substantial portion of this Trial Committee's composition

consists of Writers Guild of America management rather than rank and file membership.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: The Guild will rely upon the arguments made in prior cases in this matter.

CHAIRMAN LAVERY: In this, as in previous hearings, the motion to dismiss is not granted.

MR. CURTIS: The No. 7 motion is a motion to dismiss for the prior failure and refusal of the Guild to disclose the identity of witnesses since this significantly weakens the right to be represented that is conferred upon members of the Guild by Article X, B., Section 6 of the Constitution and By-Laws.

In other words, preparation and representation need to be viewed as synonymous.

Also, we feel that it effectively mitigates against any right to confrontation of witnesses that is guaranteed by Article X, B., Section 6 of the Guild's Constitution, and in a broader vein simply constitutes a deprivation of due process.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. In this respect, a request was made for a list of the witnesses by Mr. Hendler by letter dated April 24, 1973, which is the Trial Committee's Exhibit No. 2 in evidence.

By letter dated April 27, 1973, I responded to Mr. Hendler and advised him to the following effect:

"We decline at this time to supply you with

the names of the witnesses who will testify in support of the charges. I am aware of no provision in the Guild's Constitution or By-Laws or any principle of law which would require us to divulge the names of our witnesses prior to the time of hearing. However, in accordance with Article X of the Constitution and By-Laws you will be given the right to cross-examine any witnesses who can testify in support of the charges."

And that matter still remains. We know of no requirement of law or of our own Constitution or By-Laws which would require us to present the names of the witnesses prior to the date of the hearing.

CHAIRMAN LAVERY: The motion to dismiss under subheading 7 is denied.

MR. CURTIS: The next motion, No. 8, is a motion to dismiss on the grounds that the Writers Guild of America is estopped from and has waived its rights, if any, to discipline hyphenate members on the grounds of past actions of the Writers Guild of America, including the conduct of separate membership meetings for hyphenate members of the Guild constitutes a clear recognition by the Writers Guild of America that these individuals maintain a dual status as writers and in some other capacity as producers, directors, actors, executives, and supervisors; and for that reason the Guild having recognized this capacity and having

tacitly agreed to the performance of the dual function, would be estopped and waives the right to maintain discipline at this time.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Again, I think we will simply rely upon the arguments made in the Blees case in respect to this motion.

CHAIRMAN LAVERY: Motion No. 8 is denied.

MR. CURTIS: Motion No. 9 is a motion to dismiss on the grounds that the case would effectively have been prejudged as indicated by two factors:

Number one, that the holding of disciplinary trials while the Writers Guild strike is still in progress removes a substantial portion of the objectivity that is needed in this type of proceeding.

In other words, holding these hearings while the strike is in progress creates excessive interest in protecting the strike and the strikers.

Secondly, the motion would be based upon pretrial publicity. For example, but not limited to statements printed in the Daily Variety on April 16th, 1973, indicating that the hyphenates subject to this action would appear on a roll of dishonor and be listed in Guild publications in perpetuity so that Guild members for years to come would never forget, and also branding these individuals -- and I quote -- "as pariahs who have betrayed their colleagues."

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Again, we will rely upon our arguments

made in the Robert Blees case.

CHAIRMAN LAVERY: Well, Motion No. 9 is denied.

MR. CURTIS: Motion No. 10 will be a partial motion to dismiss specifically as to those portions of the charges against John T. Mantley in which he is charged under Section 1 of the Rules for Conduct of Members during a Strike.

This is based on the grounds that Section 1 of the Rules for Conduct of Members during a Strike is so vague and ambiguous and to such a large extent lacks the specificity required to allow adequate preparation for defense, that this simply should be deemed void for vagueness.

A rule that cannot be understood cannot be obeyed.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Yes. No request for clarification of Rule No. 1 has been made prior to this time. Rule No. 1 is not uncommon with labor organizations, and it is clear from a reading of the other sections that have been alleged to have been violated gives clear meaning to Section No. 1.

Had Section No. 1 been alleged solely as the violation in this case, there might be some merit to Respondent's motion, although that might have been arguable.

CHAIRMAN LAVERY: Motion No. 10 is denied.

MR. CURTIS: Thank you.

Motion No. 11 will be a motion to dismiss on the grounds that the specific factual allegation against Respondent John T. Mantley is defective and overbroad. Specifically, he is charged under the alleged factual allegations with having crossed the Guild's picket lines at

CBS Studio Center, quote, "during the month of April 1973," close quote.

If the Writers Guild of America in fact had and has competent evidence of the Respondent's crossing the picket lines, specific dates should have been indicated in the factual charges; and the failure to do so violates Article X, B., Section 1 of the Guild's Constitution and By-Laws.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: Again, I think we will simply rely upon arguments made in prior cases.

CHAIRMAN LAVERY: Motion 11 is denied.

MR. CURTIS: The next motion is also one that the Trial Committee has heard before, specifically that the lack of the presence of Mr. Franklin, the Executive Director of the Guild, indicates a failure by the Writers Guild to comply with Article X, B., Section 6 of its Constitution and By-Laws which indicates that the Executive Director shall present the charges and evidence.

Inasmuch as those Constitution By-Laws contemplate the appointment both of an Executive Director and Resident Counsel for the Guild, if the Constitution and By-Laws were in this particular instance to allow the Resident Counsel to act instead of the Executive Director and therefore deny a Respondent the right to confrontation and voir dire examination of that Executive Director, the Constitution and By-Laws could clearly have said so.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: We will rely on the arguments made in prior cases.

CHAIRMAN LAVERY: Motion 12 is denied.

MR. CURTIS: I believe that concludes the preliminary motions of the Respondent at this time.

CHAIRMAN LAVERY: Perhaps it would be appropriate for the Chair on behalf of the Committee to say that we do appreciate the brevity with which the traditional motions have been offered. There have been hearings where it has taken a lot longer than this to go through those motions.

MR. CURTIS: It was done with the understanding that counsel for Respondents have been present here and have made the same or similar motions previously and that some or all of the members of this Trial Committee have heard the same or similar motions before and, therefore, have some familiarity with them.

CHAIRMAN LAVERY: Well, we do thank you.

Where do we proceed now? Are we to opening statements?

MR. MENDONSA: Yes.

Very briefly, Mr. Chairman, we will simply show that Mr. Mantley during the month of April did cross Guild picket lines to perform services at a struck company, specifically CBS Studio Center, and thereby did violate the Guild's strike orders and Sections 1, 12, and 13 of the Rules for the Conduct of Members during a Strike dated February 20, 1973.

CHAIRMAN LAVERY: Mr. Curtis?

MR. CURTIS: The Respondent would reserve opening

argument at this time, please.

CHAIRMAN LAVERY: Very well.

MR. MENDONSA: Mr. Chairman, I wonder if we might just have a five-minute recess at this point so I can prepare the next witness?

CHAIRMAN LAVERY: Yes. We will take a brief adjournment.

(At 10:55 A.M. a brief recess was taken.)

(The following proceedings commenced at 11:03 A.M.:)

MR. MENDONSA: We are ready.

CHAIRMAN LAVERY: All right, Mr. Mendonsa.

MR. MENDONSA: We call as our next witness Mr. Sidney Ellis.

SIDNEY ELLIS,

called as a witness by and on behalf of the Writers Guild of America, West, Inc., was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

Q Mr. Ellis, will you please state and spell your name for the record.

A Sidney Ellis, E-l-l-i-s. Sidney is spelled with an "i" not a "y"; S-i...

Q. All right. Mr. Ellis, are you presently a member of the Writers Guild of America, West, Inc.?

A. I am.

Q. Approximately how long have you been a member of the Guild?

A. 13 years.

Q. Since the commencement of the strike on March 6th, 1973, have you served as a member of the Strike Investigatory Committee?

A. Except for the first week of the strike, yes.

Q. Will you give us a brief description of your duties on that committee?

A. Well, primarily to lead us to -- to investigate reports that members have failed to picket, refused to picket, or crossing the picket line or scabbing or in some way violating the strike.

Q. Do you contact persons who have allegedly violated the Strike Rules or Strike Orders?

A. Yes.

Q. Now, directing your attention to on or about April 6 of 1973, did you have occasion to call Mr. John Mantley?

A. I did.

Q. Will you tell us for what reason you made the call?

A. Well, on or a day or so previous to that time the story had appeared in the trades quoting John Mantley as saying that he was going to continue producing "Gunsmoke."

And on the basis of that I put in a call to

Mr. Mantley at his studio -- at his office at CBS Center Films -- CBS Films.

Q. All right. You placed the call yourself?

A. Yes, I did.

Q. Did Mr. Mantley answer the phone?

A. No. As I recall I made two calls and got his secretary each time. The first time I think she said he was out of the office and he was out to lunch. I left my name and phone number at strike headquarters and told her why I was calling and she said he would call me back. And the next day he did call me back.

Q. Did he indicate where he was calling from to you?

A. Yes, he was calling from his office at CBS.

MR. CURTIS: I'd like to object for the record and ask that the line of testimony concerning the conversation with John Mantley be stricken. There has been no foundation to show that this particular witness could recognize John Mantley's voice or know him when he talks to him.

Q. BY MR. MENDONSA: Well, Mr. Ellis, do you know Mr. Mantley?

A. I have met him once.

Q. Did you recognize his voice on the telephone?

A. I can't say that I did or I didn't.

Q. Did he identify himself to you?

A. Yes. First his secretary got on and said, "Mr. Ellis," or words to the effect, "Mr. Mantley returning your call."

And then a man got on the phone and said, "This is

John Mantley." I assumed --

Q All right. Mr. Ellis, will you tell us now what you said to Mr. Mantley and what Mr. Mantley said to you during that telephone conversation?

MR. CURTIS: For the record, we will object to the question asking for hearsay.

MR. MENDONSA: For one thing, this is not hearsay. It is the party making the declaration, and it is a party to this proceeding and an exception to the hearsay rule.

CHAIRMAN LAVERY: Well, the Chair rules adversely to the exception taken by Mr. Curtis. Also, as an unnecessary reminder, perhaps, but in this Committee's approach as a fact-finding committee, we don't invoke too many exclusionary rules in order to get at the facts. We have a fairly fluent approach, not irrelevant approach.

Anyway, we do want to hear the witness.

THE WITNESS: Well, I can't give it to you word for word, but I told John who I was and why I was calling. The reason for the call was to ascertain if he was at his office at CBS and if he was working and whether the article that appeared in the trades quoted him correctly in that. He said that it did and he proceeded to tell me that as he had told John Furia in a long conversation a day or so before, he felt basically that he had an obligation, a moral obligation to live up to his contract with CBS and he did deny or he did state, rather, that he had no intention of doing any writing, but that he was going to continue to produce "Gunsmoke" for CBS as his contract and his conscience

required.

Q. BY MR. MENDONSA: Did you advise him that the Guild was on strike against CBS?

A. I advised him that the Guild was on strike, which he was aware of; and I reminded him that there were rather severe penalties for violating strike rules, for a member to violate strike rules.

He said he was aware of whatever penalties, and he would take the chance of them being levied against him; but that he had no choice he felt except to do as he felt right.

MR. MENDONSA: I have no further questions.

CHAIRMAN LAVERY: Mr. Curtis?

MR. CURTIS: No questions.

CHAIRMAN LAVERY: Does the Committee have any questions?

(No response.)

MR. MENDONSA: He will notify my next witness.

(Mr. Sidney Ellis left the hearing room.)

MR. MENDONSA: I will call the next witness, Alan Griffiths.

ALAN GRIFFITHS,

called as a witness by and on behalf of the Writers Guild of America, West, Inc., was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

Q. Mr. Griffiths, will you please state and spell your name for the record.

A. Griffiths, G-r-i-f-f-i-t-h-s, Alan, A-l-a-n.

Q. Mr. Griffiths, you are presently employed with the Writers Guild of America, West, Inc.; is that correct?

A. Yes.

Q. What is your position there?

A. Assistant Executive Director.

Q. How long have you held that position?

A. Since September 1st, 1972.

Q. Mr. Griffiths, during the course of the strike which is now in progress, do members have occasion to request permission to enter struck premises?

A. Yes, they do.

Q. Are such requests directed to you?

A. Yes; to my office.

Q. Do you keep a record of all such requests in your office?

A. Yes. We have a record of every pass or permit given.

Q. All right. At my request did you check your records to see if a request had ever been made by Mr. John Mantley to enter a struck premises?

A. I did so check.

Q. What was your finding?

A. I could find no record of any pass issued to

Mr. Mantley or in his name or to any requests having been made by him for a pass.

MR. MENDONSA: I have no further questions.

MR. CURTIS: No questions.

CHAIRMAN LAVERY: Any questions from anybody?

(No response.)

CHAIRMAN LAVERY: You are excused, Mr. Griffiths.

THE WITNESS: Thank you very much.

(Mr. Alan Griffiths left the hearing room.)

MR. MENDONSA: Mr. Chairman, my next witness is on his way and is delayed. He should be here within a matter of ten minutes or so, I would suspect.

In the meantime, well, I can introduce the documents, and if I may, show them to counsel for the Respondent.

MR. CURTIS: This would be the credit record?

MR. MENDONSA: This would be the credit record and the work records.

We would have them marked as Guild's Exhibit No. 1 and Guild's Exhibit No. 2. Both are credit records.

Guild's Exhibit No. 1 would be the credit record for John Mantley; Exhibit No. 2 would be the credit record for Truman Clay, a pseudonym for John Mantley.

CHAIRMAN LAVERY: Mr. Mendonsa, does the record show whether these records are offered in evidence or marked for identification?

MR. MENDONSA: No, I will be offering these into evidence. And that reminds me, the Trial Committee's

exhibits have only been marked for identification up to this point, and they should be received, the motions having been denied.

CHAIRMAN LAVERY: Yes.

(Trial Committee's Exhibits 1 through 7, previously marked for identification, were received into evidence.)

MR. MENDONSA: I will pass these to the Committee, Guild's Exhibit No. 1 -- and there are enough to go around to the reporter -- and Guild's Exhibit No. 2.

(The aforementioned documents were marked as Guild's Exhibits Nos. 1 and 2 respectively, and received into evidence.)

MR. MENDONSA: Then I will mark as Guild's Exhibit No. 3 the work record and the dues record for Mr. John Mantley.

(The aforementioned documents were marked for identification as Guild's Exhibit No. 3.)

MR. MENDONSA: May we stipulate that these are records kept in the normal course of business?

MR. CURTIS: Off the record, if we can, for a moment.

(Discussion held off the record.)

MR. MENDONSA: While we are doing that, I might as well pass out the first exhibits.

Are you willing to stipulate that these are records kept in the normal course of business?

MR. CURTIS: Well, as in the prior hearing on Mr. Blees, we have no reason to disbelieve your representation that

they are records kept in the normal course of business, but again, I do not believe that we would have the authority to stipulate to that fact.

CHAIRMAN LAVERY: Before we proceed with this, does the record show that Trial Committee's Exhibits 1 through 7 have been offered and accepted in evidence?

MR. MENDONSA: They have been offered and I believe you did accept them.

CHAIRMAN LAVERY: If there is no objection, I want to make that clear: it was my intention to rule that 1 through 7 had been offered and accepted. Originally they were marked for identification.

Now, what is our procedure?

MR. MENDONSA: Well, if we cannot enter into a stipulation that these are records kept in the normal course of business, I want to bring in somebody from each of these departments to testify.

MR. CURTIS: Off the record for a second.

(Discussion held off the record.)

MR. MENDONSA: We will make a representation that they are kept in the normal course of business.

MR. CURTIS: I might indicate this just for the record, if I may, also that although the document marked as Guild's Exhibit No. 3 appears to indicate that as of, I believe, January 1973, John Mantley had the membership status of a current member in the Guild, we are unable to immediately ascertain from these records whether or not that is the fact.

If we were later to prove that he was not a

current member of the Guild but rather an associate member or had some other membership status, of course, we would at that time move to dismiss the charges on the grounds that he had lacked the right to vote under the Guild Constitution and By-Laws on the strike itself and the Strike Rules.

As I say, again, we have no reason at this time based on the examination of these rather lengthy records to disbelieve the designation of "Current," but we have no basis, either, for verifying that independently.

MR. MENDONSA: Well, with the representation that these are records kept in the normal course of business, I will offer them into evidence as Guild's Exhibits 1, 2, and 3.

CHAIRMAN LAVERY: The Committee will so accept them.

(Documents previously marked for identification as Guild's Exhibit No. 3 were received into evidence.)

MR. MENDONSA: Now we come to the point only of waiting for the arrival of my next witness. If we may have a few minutes, then, we will bring him in as soon as he gets here.

MR. CURTIS: I might suggest this, in the interest of expedition, that as the Committee is aware, the last time that Mr. Emanuel and myself were present we had a relatively brief case to put on in behalf of our client by way of a declaration.

If Mr. Mendonsa would stipulate that we could open our case at this time for the purpose of the introduction of documentary evidence, perhaps we could use up this

dead time or this vacuum in time with the offer and hopefully the admission of those exhibits.

CHAIRMAN LAVERY: I see no objection to that.

MR. MENDONSA: I have no objection to that.

MR. CURTIS: Very well.

R E S P O N S E

MR. CURTIS: The first document offered on behalf of the Respondent John T. Mantley would be the declaration of John T. Mantley dated May 31, 1973.

(The aforementioned document was marked as Respondent's 1 for identification.)

MR. MENDONSA: (Perusing document.)

I have problems with the statement. It is a conclusionary statement by the Respondent that he has performed no writing function since the commencement of the strike.

I suspect I have no objection to its admission into evidence; however, I think that some weight or -- it's really a question of the weight that should be given to the document, as to whether or not he has in fact done any writing services. It is not subject to cross-examination here at this time, but with that understanding, I have no objection to its admission.

MR. CURTIS: I might indicate also, just for the record, that the declaration is made under oath, that is, under the

penalty of perjury; and although we are aware that the right of cross-examination is still lacking with the introduction of such evidence, at least one of the two traditional objections to hearsay -- that is, whether or not a statement was made under oath -- is removed from the form of this proposed exhibit. The statement is, in fact, made under oath.

CHAIRMAN LAVERY: If the Committee doesn't have any objections, I think we might receive it in evidence.

MR. CURTIS: The reporter has been provided with a copy, and I have, I think, almost sufficient copies for the Committee.

CHAIRMAN LAVERY: Thank you.

(The aforementioned declaration was marked as Respondent's Exhibit No. 1 and received in evidence.)

CHAIRMAN LAVERY: Mr. Curtis.

MR. CURTIS: The second proposed exhibit on behalf of the Respondent is a declaration under penalty of perjury of Bernard McEveety, executed May 31, 1973.

(The aforementioned document was marked for identification as Respondent's Exhibit No. 2.)

MR. MENDONSA: (Perusing document.)

I have no objection to the introduction of that.

CHAIRMAN LAVERY: Mr. Curtis?

MR. CURTIS: Sorry. I guess there's been no ruling so far.

CHAIRMAN LAVERY: Oh, it's received. Counsel said he

had no objection.

MR. CURTIS: I only have two copies.

(The aforementioned document previously marked as Respondent's Exhibit No. 2 was received in evidence.)

CHAIRMAN LAVERY: Who is Mr. Bernard McEveety?

MR. CURTIS: Mr. McEveety's capacity is set forth in his declaration. He is a director and has done a large number of "Gunsmoke" episodes.

The next --

MR. ORINGER: Excuse me. May we have a moment to look this over, please?

MR. CURTIS: Oh, certainly.

(The document marked and received as Respondent's Exhibit No. 2 was examined by the Committee.)

CHAIRMAN LAVERY: All right, Mr. Curtis.

MR. CURTIS: The final document, if I may, is the declaration of Vincent McEveety, dated May 31, 1973, and I might comment that the contents except for paragraph 2 in no substantial part and dates set forth are virtually identical to the declaration of Bernard McEveety.

(The aforementioned document was marked as Respondent's Exhibit No. 3 for identification.)

MR. MENDONSA: (Perusing document.)

I have no objection.

MR. CURTIS: Again, I have two copies.

CHAIRMAN LAVERY: It will be accepted.

(The aforementioned document previously marked Respondent's Exhibit No. 3 was received in evidence.)

MR. MENDONSA: All right. May I have just a couple of minutes, then, with my witness? My witness has arrived. May we have just a few minutes recess?

CHAIRMAN LAVERY: Agreed.

(At 11:33 A.M. a brief recess was taken.)

(Whereupon at 11:37 A.M. the following proceedings were had:)

MR. MENDONSA: We are ready, Mr. Chairman.

CHAIRMAN LAVERY: All right. Proceed.

MR. MENDONSA: We will call as our next witness Mr. Paul Dubov.

PAUL DUBOV,

called as a witness by and on behalf of the Writers Guild of America, West, Inc., was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

Q Mr. Dubov, will you state and spell your name for the record.

A Paul, P-a-u-l, Dubov, D-u-b -- as in boy -- o-v -- as in Victor.

Q. Mr. Dubov, are you a member of the Writers Guild of America, West?

A. Yes, I am.

Q. Approximately how long have you been a member of the Guild?

A. About ten years.

Q. Now, you know the Guild has been on strike against certain companies since March 8 of 1973. During that time have you served as a strike picket captain?

A. Yes.

Q. Where have you so served?

A. Cinema Center.

Q. That would be CBS?

A. CBS, Cinema Center.

Q. Over what period of time did you serve as a picket captain?

A. I started at the beginning of the strike and I then went straight through until April 16th. And then April 16th I was off for about a week -- I just got very tired -- I was off for about a week or a week and a half, and during that week I drove by several times just to see that things were rolling along. Then I came back on -- Frank Chase replaced me for a few days and then I relieved someone else and then I came back on the rest of the time until the picketing was stopped altogether.

Q. All right. Now, will you tell us briefly what your functions were as the picket captain at CBS Center?

A. Well, I kept track of all the pickets and during

the first -- during the first six weeks that I was on I checked every shift. I came back every three hours all day long starting at 6:00 o'clock in the morning, it was 6:00 in the morning till 6:00 at night. Then after that when it was changed to 9:00, I came at 9:00 in the morning and then came back at every three-hour shift so I could keep track of all my pickets and keep them happy.

Q. Now, directing your attention to the dates of April 5 and April 6 of 1973, were you picketing or did you have pickets at CBS Studio Center on those dates?

A. Yes, we did.

Q. Did you have sufficient pickets to cover all gates?

A. The two gates in front that were used were covered, and I have -- the back gate was never open for us in terms of traffic -- and I have signatures of all the pickets which is how I kept track so nobody could say, "I was there, but he didn't put me down."

So I signed every picket in that picketed for me and I believe Mr. Lavery was one of my pickets that signed in every time he picketed. So that is the way I kept track so nobody could goof.

Q. For those two gates, then, did you have a full contingency of pickets?

A. Yes. Here we are. The 5th, I had --

Q. That's okay. You don't have to go through that.

But you had every gate covered?

A. Yes.

Q. On every shift?

A. Right.

Q. During what times of the day was there picketing being done?

A. I believe they had changed to 9:00 o'clock by that point. So that would be 9:00 to 6:00.

Q. 9:00 A.M. to 6:00 P.M.?

A. 9:00 A.M. to 6:00 P.M.

Q. Did you have an occasion then to see that the pickets were there on those days?

A. Oh, I checked them all the time. Absolutely.

Q. And they were there?

A. Oh, yes.

MR. MENDONSA: I have no further questions.

CHAIRMAN LAVERY: Mr. Curtis?

MR. CURTIS: Excuse me for one moment, please.

(Discussion held off the record between Mr. Curtis and Mr. Emanuel.)

MR. CURTIS: No questions.

CHAIRMAN LAVERY: Do any members of the Committee have any questions?

(No response.)

CHAIRMAN LAVERY: No?

Thank you, Paul.

THE WITNESS: Okay. Do you want to keep these for your records?

MR. MENDONSA: No. That is fine.

THE WITNESS: I will just put them together and be on my way.

MR. MENDONSA: Thank you for the quick trip.

THE WITNESS: Glad for an excuse to get out of the house.

CHAIRMAN LAVERY: Thank you, Paul. Take care.

MR. MENDONSA: With that the Guild will rest its case.

MR. CURTIS: As in prior hearings, at the point of the Guild resting its case, there would be -- before there was one motion; this time there would be two.

The first is as the Trial Committee or certain members of it heard before a motion to dismiss on the grounds that the Guild has failed to prove by any direct evidence that the Respondent John T. Mantley actually committed the offenses that he is charged with, that is, having crossed the Guild's picket lines at CBS Studio Center.

CHAIRMAN LAVERY: As to that motion, the motion is denied.

MR. CURTIS: The second motion would be for a partial dismissal of the charges.

Mr. Mantley was charged with having crossed the Guild's picket lines at CBS Studio Center during the month of April, 1973. The Guild's proof to the extent that there has been any proof of his presence behind picket lines, I believe extends at the most to the dates of April 4th and 5th, 1973, and not to any other dates during that month.

Therefore, to the extent that the charges could be read to charge crossing the picket lines during that entire month, there has been no proof of the balance of the month, and we would ask that the charges as to that

period of time be dismissed.

CHAIRMAN LAVERY: Mr. Mendonsa?

MR. MENDONSA: The proof that has been offered by the Guild has been with respect to the area around April 4th, 5th or 6th. However, the evidence introduced by Respondent would indicate and specifically Respondent's No. 1 would indicate that Mr. Mantley says that he has since March 28, 1973 -- and I suspect that must mean to the date of the declaration which would be May 31, 1973 -- has been performing as a producer for "Gunsmoke" at CBS.

So I would say that the record has been made clear that it would include more than just the first few days of April.

CHAIRMAN LAVERY: If the Committee has no objection, the motion to limit to April 4th, 5th, and 6th, is denied.

MR. CURTIS: At this point the Respondent having already put in its three exhibits -- I assume Exhibits A, B, C in contradistinction to the Arabic numbers on the Guild's exhibits -- those exhibits having been accepted, the Respondent would rest.

We would rest with the comment -- and it was asked the last time, I believe, our firm was representing one of these hyphenates why the Respondent was not present -- I would again comment for the record and for the Trial Committee that this was on advice of counsel. In both instances with the clients we represented there was some preference expressed by those clients for appearing and presenting their case. The advice given to them was not to do so in

the context of these hearings. I would simply comment on this and possibly it is more appropriate for closing arguments, but I believe we are very close to that point, anyway.

To the extent that this Trial Committee might attempt or might be inclined to draw any adverse interests or inferences from the fact that the Respondent in this matter and the Respondent in the prior matter were not present, let me simply comment that this was on advice of counsel. Both Mr. Mantley and Mr. Blees are what I would term "good clients" and normally accept the advice of counsel; so to the extent that there are any adverse interests or inferences to be drawn, I would hope that they would extend only to the counsel representing the Respondents and not to the Respondents themselves.

CHAIRMAN LAVERY: Mr. Curtis, did we for the record receive into evidence your exhibits?

MR. CURTIS: It is my understanding that they were received.

CHAIRMAN LAVERY: All right. Closing statements?

MR. MENDONSA: Well, again, very briefly, you have heard the evidence from the testimony, seen the documents. It is very fresh in your memory; so I will not belabor the points.

Mr. Furia, Mr. Ellis, both testified that they talked with Mr. Mantley at Studio Center. It was apparent that he was there. He admitted that he was there and performing services for that company.

The further testimony that there was a picket line

there on the days of the 5th and 6th of April and that Mr. Griffiths testified that Mr. Mantley had never requested nor was ever issued a pass to go into the struck premises.

With that in mind, I think that you will reasonably conclude that Mr. Mantley did violate the Guild's Strike Orders, that he did violate the Guild's Rules for Conduct of Members during a Strike dated February 20, 1973, specifically in Section 1, 12, and 13.

CHAIRMAN LAVERY: Mr. Curtis?

MR. CURTIS: Without belaboring the point, since we have already made motions on those grounds, I would again point out that the Guild has produced no direct evidence that the Respondent John T. Mantley crossed any Guild picket line. There has been some testimony through hearsay evidence of his possible presence in the studio at or on two dates during that period of time; but again, no direct evidence of him crossing the picket line.

I would simply draw the Trial Committee's attention to the fact that if Mr. Mantley crossed the picket lines throughout the months of April 1973, why was the Guild not able to produce a witness who actually saw him cross the picket line.

I would point this out also: That it is clear that to the extent that it was at all possible for him to do so consistent with his commitments to CBS and to the Producers Guild of America, the Respondent did support the strike of this Guild. Specifically he refrained from any and all writing activities during that time and he even went

a little beyond that. I think Guild Exhibit 3, the record of dues payments, reflects a $500 contribution to this Guild, I think a $500 contribution to the Guild's strike fund.

It is reasonably clear to me, and I hope it is to the Trial Committee, that again we have a situation of a man caught between conflicting legal commitments and caught between the dictates of his own conscience and a man who in good faith attempted to reconcile those demands and those conflicting obligations to the best of his ability.

Nothing further.

CHAIRMAN LAVERY: The Committee will take it under advisement.

Is there anything that should be added to the record at this time?

(No response.)

CHAIRMAN LAVERY: Oh, yes. I have a formal statement to wind up.

The matter will be taken under submission by the Trial Committee and after the Committee has deliberated it will submit its written recommendation as to the guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors who under the Guild's Constitution and By-Laws have the authority to either accept, reject, or modify this Committee's recommendation.

In order for this Committee to make a recommendation, the Guild will require a vote of no less than four members. If more than one member votes for acquittal, it

will be the recommendation of this Committee that the Respondent be acquitted of the charges.

There being nothing further at this time, the hearing is adjourned.

---ooo---

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

I, THEDA MOSS, CSR and Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

That the foregoing Intraunion Disciplinary Hearing in the Matter of Writers Guild of America, West, Inc. versus John T. Mantley was taken before me at the time and place herein set forth and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing 50 pages contain a true and correct transcription of my shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 30th day of July, 1973.

Theda Moss
CSR and Notary Public in and for the
State of California

OFFICIAL SEAL
THEDA MOSS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires April 16, 197

Respondent's
Exhibit 1

DECLARATION OF JOHN T. MANTLEY

I, JOHN T. MANTLEY, say and declare as follows:

1. I am the Executive Producer of the "Gunsmoke" television series for CBS.

2. Since March 28, 1973, when CBS was struck by the Writers Guild of America, Inc., neither I nor any of my production office staff have performed any writing functions whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of May, 1973, at Los Angeles, California.

John T. Mantley

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.,

and

DAVID VICTOR.

No. _____.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

May 21, 1973

Reported by:

PETER M. RUNKLE

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
DAVID VICTOR.)
)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of Writers Guild at 8955 Beverly Boulevard, Los Angeles, California, commencing at 3:00 p.m., Monday, May 21, 1973, before Peter M. Runkle, Notary Public.

BEFORE:

CHRISTOPHER KNOPF, Chairman

NATE MONASTER

EMMET LAVERY

JAMES POE

MICHAEL BLANKFORT

APPEARANCES:

FOR WRITERS GUILD:

JOHN A. MENDONSA, Esq.
Resident Counsel, WGA
8955 Beverly Boulevard
Los Angeles, California 90048

FOR RESPONDENT DAVID VICTOR:

LOEB & LOEB
BY: ALBERT F. SMITH, Esq.,
DAVID G. MILLER, Esq.,
ROBERT A. HOLTZMAN, Esq., and
SAUL N. RITTENBERG, Esq.
One Wilshire Building
Los Angeles, California 90017

and

ROSENFELD, MEYER & SUSMAN
BY: ALLEN E. SUSMAN, Esq., and
GEORGE ZACHARY, Esq.
9601 Wilshire Boulevard
Beverly Hills, California

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MR. KNOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus David Victor. The matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West., Inc.

The members of the Trial Committee are, and I will have them introduce themselves to you --

MR. POE: James Poe.

MR. MONASTER: Nate Monaster.

MR. LAVERY: Emmet Lavery.

MR. BLANKFORT: Michael Blankfort.

MR. KNOPF: Christopher Knopf, Chairman of the Committee.

MR. MENDONSA: John A. Mendonsa appearing for the Executive Director of the Writers Guild of America, West, Inc.

MR. SMITH: For the Respondent David Victor the firm of Loeb & Loeb, and my name is Albert F. Smith. My colleagues are David G. Miller, Robert A. Holtzman, and Saul N. Rittenberg.

MR. SUSMAN: Also Rosenfeld, Meyer & Susman. I am Allen Susman, and with me is George Zachary of the same firm.

MR. KNOPF: I ask you, could you speak later to identify yourselves again for my benefit? Are there any other appearances being made in this matter? I believe you gentlemen have all identified yourselves. This is a

closed hearing. If there are any persons present in the hearing room who are not here as a representative of one of the parties here to testify in this matter, we will ask that you leave at this time.

MR. CURTIS: Mr. Knopf, could I identify myself, please. I am Larry Curtis of the firm of Musick, Peeler & Garrett. We will be representing two writers, and I would ask at this point that I be allowed simply to observe the conduct of this hearing.

MR. KNOPF: I would like to confer with my Committee on that, if I may, please.

(A discussion was held off the record.)

MR. KNOPF: We would like to know what counsel feel about that.

MR. MENDONSA: Well, I am only questioning if you are planning just to observe at this hearing particularly?

MR. CURTIS: My intention was simply to observe today. I do not plan to make any further observance through the course of the balance of these hearings, until, of course, the clients we represent for hearing.

MR. MENDONSA: Well, I feel that there may be information that will be presented here to the Committee that does not involve the case which Mr. Curtis is representing his client. I don't really know what purpose we serve by Mr. Curtis's observation here.

MR. KNOPF: One moment, please.

(A discussion was held off the record.)

MR. KNOPF: I think we are of accord unanimously that

Mr. Curtis should not be allowed to stay. You will have your time here. We thank you very much.

MR. CURTIS: Thank you.

(Mr. Curtis left the conference room.)

MR. KNOPF: In regard to the introduction of Trial Committee exhibits, I have a copy of the charges and a cover letter sent by certified mail to the respondent on April 14th, 1973 with a signed return receipt attached. I have marked these as Trial Committee's Exhibit No. 1.

MR. SMITH: Excuse me, Mr. Chairman. Before you proceed, I have a series of applications on behalf of the respondent David Victor and in particular with respect to your last statement, sir.

The respondent at this point demands service of a copy of the charges against him pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, which became effective on January 18th, 1973.

Mr. Chairman, no copy of the charges were ever served on Mr. Victor. I specifically call your attention to Section 1 of Article 10 of the Constitution and By-Laws which reads, and I just excerpt the pertinent phrase:

> "Any current member of this Guild in good standing, or the Council or a Branch Board, may invoke the provisions of this Article by filing written charges with the Executive Director not later than one year after the date upon which the alleged offense occurred."

And then it goes on to another time element:

"The charges shall specify as succinctly and explicitly as possible the nature of the offense and the date and place of its occurrence."

That is from Section 1 of Article 10.

Mr. Chairman, Mr. Victor was served, as I have just remarked, with a document entitled Notice of Disciplinary Hearing and Charges, which were forwarded to him with a covering letter from Mr. Mendonsa, the letter being dated April 14th, 1973.

Mr. Victor, Mr. Chairman, was not served with the charges referred to in Section 1 of Article 10 of the Constitution. That is, the written charges which were filed under that provision with the Executive Director by the Guild member or the body which initiates the disciplinary proceeding under Article 10.

In this connection, Mr. Chairman and members of the Committee, I respectfully call your attention to the provisions of Section 41185 of the Labor Management Relations Reporting and Disclosure Act which governs employees in disciplinary proceedings and safeguards against improper disciplinary action, which reads in pertinent part:

"No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for non-payment of dues by such organization or any officer

thereof, unless such member has been served with written specific charges, been given a reasonable time to prepare his defense, afforded a full and fair hearing" from the governing statute.

I would therefore submit, Mr. Chairman, that no copy of the charges that are referred to in Section 1, that is, the written charges that had to have been filed with the Executive Director by the person or the board that initiated these charges has ever been served on Mr. Victor, and I would at this point demand a copy of said charges.

MR. KNOPF: Mr. Mendonsa, do you wish to --

MR. MENDONSA: What section are you referring to?

MR. SMITH: Section 1 of Article 10 on page 31, Mr. Mendonsa, of the current set of Constitution and By-Laws.

MR. SUSMAN: May I say a word on this. I will call your attention also to Section 5 of the same Article 10 of the By-Laws, which provides that:

> "After the trial committee has been selected, a copy of the charges shall be served upon the member."

You not only have a requirement in Section 1 calling for only specific entities having the right to file the charges, but in Section 5 those charges themselves must be served upon the charged member. Among other things, the member has the right to know at that time, and that time is the time prior to the hearing, which would

afford him enough time to provide an adequate defense and to take such other steps as he deems advisable. That has never been done in this situation, in this particular proceeding, and so, as counsel for Mr. Victor, my position is that nothing can take place until after the charges themselves have first been filed and served upon the member, and then the various time periods provided under the Constitution and By-Laws start running.

In our view, the whole proceeding is void ab initio by reason of the failure to proceed in that manner.

MR. KNOPF: What we will do is listen to all your discussions and arguments, and we may convene shortly for a few moments to assess our feelings. I would like simply to ask this. In front of me is a Notice of Disciplinary Hearing and Charges. I have to assume that they were sent to Mr. Victor. Among other statements, it reads as follows:

> "Notice is hereby given that you are charged with violation of the Guild's strike order and Sections 1, 12 and 13 of the Rules for the Conduct of Members during a Strike, dated February 20th, 1973, which reads as follows:
>
> "'Section 1: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a

strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

"'Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

"'Section 13: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.'

"Specifically, you are charged with

having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April, 1973 for the purpose of rendering services for a company against whom the Guild was at such time on strike.

"You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges."

Forgive me. Did Mr. Victor not receive this?

MR. SMITH: Mr. Chairman, the issue was not whether or not Mr. Victor received the document from which you have read. The document from which you have read shows on its face that it could not be the charges which it refers to in Section 1 of Article 10 of the Guild's Constitution, because the scheme of disciplinary procedure is a scheme whereby, Step 1, written charges are preferred against a member by either another member or the board. That is a written instrument which is then presented to the Executive Director.

Step 2, the Executive Director reviews that and then determines whether or not he is going to go further with it. Section 2 of Article 10 says that the Executive

Director then, if he deems it appropriate, submits those written charges to the Board for further consideration.

Step 3, as set forth in Section 3, is that the Board then determines whether or not the charges have merit. If the Board decides it doesn't have merit, the charges are dismissed, and if the Board decides it does have merit, then Step 4 is set forth. That is that the charges are then referred to a Trial Committee, such as this duly-constituted committee sitting here today.

All of these steps take place before the charges are served upon the member. Now, obviously, this document from which you have read is a purported characterization, a third-hand characterization, of the charges signed by Mr. Mendonsa and sent to Mr. Victor. It could not on its face have been the charges which were referred to Mr. Franklin as Executive Director under Article 10, Section 1.

The point I am making, Mr. Chairman, is that the charges against Mr. Victor, which under Section 1 had to be referred to the Executive Director have never been served upon Mr. Victor, but what was sent to him was a third-hand purported characterization of the charges, which on its face doesn't comply with the requirement of service of the charges.

As Mr. Susman pointed out, even the Guild's Constitution requires that a copy of the charges be served upon Mr. Victor, not a characterization or third-hand account of them.

If it weren't already a statutory mandate of

Section 411 of the Labor Management Relations Reporting and Disclosure Act. The point then is not that Mr. Victor did or did not receive the document from which you read, Mr. Knopf. The point is that the charges described in Section 1 of Article 10 of the Guild's Constitution were never served on Mr. Victor as of the date of this hearing, and I respectfully submit, therefore, that under the Guild's own Constitution and By-Laws this Committee cannot go forward, because the preliminary prerequisites have clearly not been met.

MR. MENDONSA: It is true that in Section 1 of Article 10 it requires that these charges be filed in writing with the Executive Director, either by the Board or by a member. If they are filed by a member, Sections 2 and 3 do not apply, as Mr. Smith would have us believe here, but at any rate, then it says in Section 5:

> "A copy of the charges shall be served upon the member against whom the charge has been made, accompanied by a notice designating the date and place of hearing."

Now, it is really questionable whether or not Section 5, I suspect, is talking about a copy of the precise document that is referred to in Section 1. I don't see that that is a necessary reading of this section. Under Article 3 of the Constitution, Section 2 and Sub-Section N provides that the governing body of this Guild, which is the Board of Directors, has in its authority the

construction and interpretation of the provisions of this Constitution and By-Laws.

It seems to me then that the Board of Directors, by moving in the manner in which it has, has interpreted Section 5 as not literally meaning a copy of the written charge that was filed with the Executive Director, but at least a copy of the precise and authentic copy or a true representation of those charges, which have, in fact, been served by certified mail on April 14 and which were received on April 16 by Mr. Victor.

Mr. Victor has not been denied by due process by the fact that he has been given the precise document in which the Board has referred this matter to the Executive Director. He has not been denied his rights to prepare a trial under the Labor Management Relations Reporting and Disclosure Act.

The Constitution and By-Laws require that a hearing be set not earlier than 15 days after the service of the charge. Well, certainly we are very much beyond that period of time.

As far as his being denied a fair hearing, I think that you will find no other union that I know of which represents or gives an opportunity to have such representation as we do in these proceedings. Nowhere would a guild or union allow a member to be represented by counsel, and if they do allow representation by counsel, it would normally be by this counsel that represents the association or the member companies of the association

that it is opposing before the National Labor Relations Board.

I do not see that this man is denied a fair hearing at all. He has been served with the charges that the Board has brought against him, and he has had notice of those charges. He has had ample time to prepare a defense in this case, and I think the motion should be denied.

MR. SMITH: Mr. Chairman and members of the Committee, the difficulty with Mr. Mendonsa's statements is simply that Section 5 of the Guild's Constitution states, I submit, in clear and unequivocal terms, that a copy of the charges shall be served upon the member. We don't know what the charges are. We don't know what was in the original document that had been submitted to Mr. Franklin as Executive Director upon which he based his judgment to go forward and submit it to the Board. We have no idea what that might have been. All we know, Mr. Knopf and members of the Committee, is what some person, presumably Mr. Mendonsa because he signed the notice, characterized as the charges in submitting them to Mr. Victor, and I submit there couldn't be a clearer violation of plain unadulterated language when Section 5 states that a copy of the charges shall be served, and what the member got in lieu of that was a characterization of the purported charges signed by an attorney on the staff of the Guild.

I submit that this Committee has no jurisdiction to go forward under your own rules, Mr. Chairman and

members of the Committee, and that any further proceedings under this purported characterization of the charges rather than the charges themselves would be most improper.

MR. KNOPF: We have a question or two from the other members of the Committee.

MR. LAVERY: Mr. Chairman, there are some points to cover and so little time available. Isn't it possible that we might proceed to the next point? I am suggesting that we hear in succession all the points that may be raised and then make the appropriate ruling. We could stay here the rest of the afternoon simply exchanging cumulative arguments about the first point.

Could we move it?

MR. SMITH: Well, Mr. Chairman and members of the Committee, I believe that the very point that you have raised places squarely in issue the very viability of this Committee and the Committee's right to proceed. With all due respect to the members of the Committee who proposed what appeared to be a pragmatic suggestion, we are contending on behalf of David Victor that this Committee has no jurisdiction to proceed, because we submit that it is not a constitutionally-constituted committee, because very simply the Constitution states that 15 days after the charges have been served then the Trial Committee sits after the 15 days have expired, because the 15 days haven't commenced to run, because the charges have never been served on Mr. David Victor, and therefore with all deference, sir, I don't believe that we can proceed.

I don't believe under the law this Committee has the prerogative to continue with this hearing.

MR. KNOPF: I am going to ask Mr. Susman to make a statement, and then we are going to recess for about five minutes or less and talk among ourselves.

MR. SUSMAN: I want to suggest a reason for the Constitution and By-Laws being written the way they are. I don't think anybody has mentioned that. It is fundamental in our system of justice for somebody who is accused to know who his accuser is and to know that at the earliest possible point in the proceeding, whether it be a proceeding of this nature or a proceeding in court or any other proceeding which falls under due process requirements, and due process requirements basically are incorporated in union hearings by the provisions of the Landrum-Griffin Act to which Mr. Smith alluded in the earlier point.

That particular right Mr. Victor has never received, because he has never been informed or given a copy of the charges themselves.

Now, one other point. As far as we know, the charges may not exist at all. All that we know exists is a notice, that the charges themselves have never been shown to anybody representing the defendant, and to this point in time they may not exist, as I say, at all in any manner. That is the point I wish to make.

MR. KNOPF: I would like to know one particular thing from you, Mr. Mendonsa. The articles that you referred to and the sections of those articles which you feel justify

the procedure that we have taken.

MR. MENDONSA: Yes. Well, I think it is a matter of question as to whether or not Section 5 should be literally read to mean that an exact copy of the charge that is filed with the Executive Director either by a member or the Board is what Section 5 is referring to, and I think that is a subject that is subject to interpretation.

The interpretation of this Constitution and By-Laws is left to the Board of Directors. The Board of Directors in electing to pursue this course of action in filing the charges have in fact interpreted Section 5 as not requiring a precise copy of the written charges that have been filed by the Board with the Executive Director.

Now, since the charge goes out over my signature, let me make this representation as an attorney, a member of the California Bar, that I do sit with the Board of Directors and that the charges that have been filed are in fact a true representation of the charges that have been filed with the Executive Director by the Board of Directors.

MR. SMITH: Mr. Chairman, I would like to request that you permit my colleague, Mr. David Miller, to make a statement specifically addressed to Mr. Mendonsa's last statement.

MR. KNOPF: We are not here governed in the Landrum-Griffin Act. We are governed by the Constitution and the Strike Rules under the Constitution. I can't respond to you on a legal basis. I am involved with the Constitution and with the Strike Rules.

MR. SMITH: Mr. Chairman, may I simply respectfully state for the record that it certainly is the respondent's position that this Committee and any committee hearing any disciplinary grievance in any labor organization is governed by the National Labor Relations Act -- and certainly the Writers Guild is such an organization -- is bound by the provisions of the Landrum-Griffin Act, which purports to set forth the safeguards against improper disciplinary action applicable to all members.

However, it is also true, and the respondent Victor definitely asserts the position, that the very provisions of the Writers Guild Constitution and By-Laws are also violated, as well as the provisions of the Landrum-Griffin Act are violated by a failure to serve the written charges on respondent Victor, and I don't believe that for the Writers Guild's resident attorney to represent to us now on the day of the hearing that he has compared the original charges and that his purported characterization of them is true and accurate, suffices for the requirements of service of the charges as specifically set forth, Mr. Chairman, in Section 5 of the Guild's Constitution, and I would further request to permit my colleague, Mr. Miller, to address himself specifically to the statement made by Mr. Mendonsa.

MR. BLANKFORT: I would like to translate in my mind what you have been getting at, so I can understand it. In the first place, I think I should say in another way what Chris has said, that this is not a legal body in the sense

that we are authorized to discuss legal questions. We are neither authorized, nor are we competent. We are, so to speak, a committee of Mr. Victor's peers. We can only function by the authority given to us. So I ask you, Mr. Smith, if I understand correctly.

If you had had a copy for Mr. Victor of the statement made by two, three, or four witnesses saying on such-and-such a date Mr. Victor was seen at such-and-such an hour crossing the picket line in such-and-such a place, that would satisfy your requirements?

MR. SMITH: Mr. Blankfort, let me answer both points which you make.

It is, I would submit to you, sir, and to the Chairman and to the Committee, it is a fact that this Committee, although it is a committee constituted primarily of laymen, as I understand it, there is only one attorney member of the Committee. It is nevertheless a fact that this Committee is bound by the law and is bound by legal principles, because this Committee is hearing disciplinary charges against Mr. Victor.

This Committee has the authority, at least if it is duly constituted and complies with all the procedures set forth in the Guild's Constitution, that Committee would make a recommendation as to whether or not any discipline should be imposed upon this member.

I would respectfully submit to you, Mr. Blankfort, that you are bound by overriding legal principles as well as by the requirements of the Guild's Constitution.

Addressing myself to your second point, would it satisfy us? It is not a question of being satisfied or not being satisfied, as a layman would use the word "satisfy". It is simply a case of having before us a period prescribed by the Guild's Constitution as being at least 15 days before the date of this hearing, having before us the precise charges that were filed with the Executive Director by such persons who made the charges against Mr. Victor.

Whether or not we would be "satisfied" or "dissatisfied" is not the point. The point is that Mr. Victor is entitled to prepare a defense to the precise charges, and he, or those who represent him, should have the right to be confronted with the charges.

As Mr. Susman stated, to know the names of the individuals who preferred the charges, to know precisely what was charged against him, to do with that as he sees fit or as his counsel sees fit in the preparation of this defense.

The only point I am making here, Mr. Blankfort, is that we are entitled to this under your Constitution, and we are not granted this with respect to this particular hearing, and for that reason we simply demand a copy of the charges and, number two, that the procedure set forth in the Guild's Constitution be now followed, namely, that there be the appropriate procedure that the time be granted to Mr. Victor after he has received copies of the charges.

I hope that answers your questions, sir. We are

not trying to be technical. We are coming to a basic question of due process under this Constitution. We are entitled to the charges. It is as simple as that.

MR. KNOPF: Your contention is that the notice that you received on April 14th is not a copy of the charges?

MR. SMITH: Our contention is we do not know, Mr. Knopf, whether it is or is not, but we should not have placed upon us the burden of having to know or not to know. The notice purports to characterize in the third person what the charges are. It is not equivalent.

MR. KNOPF: What do you mean by "characterizing a third person"? Is it specifically you that are charged?

MR. SMITH: Mr. Mendonsa, as signatory of this document, is telling Mr. Victor, the addressee, that Mr. Victor is charged with these things, and then he purports to characterize the charges. It is not the document described in Section 1 of Article 10, Mr. Knopf. I believe, sir, all you have to do is read Section 1 and see that the document described is the charges to have no doubt in your mind that this document could not be the charges, as they are described in Section 1.

I would like Mr. Miller to address the point.

MR. MILLER: Almost more so than any other case, because of the way these charges are phrased, is the necessity for a copy of the full charges, and I would like to point out two very brief things.

One, almost immediately after we were retained to represent Mr. Victor, we requested of Mr. Mendonsa a

list of the witnesses who would be testifying against our clients. The specific reason for requesting that list of witnesses was because we were not served with copies of the actual charges, which would have been signed, no doubt, by the purported witnesses.

It is particularly important here in Mr. Victor's case, where, even though this was served in the middle of April, the general allegation you have is that Mr. Victor is charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April 1973. That is the only specificity that we have there.

For those reasons, because there are no specific dates here, and because we don't have the actual charges, had a doubt of who the first witness was, and because we were denied by Mr. Mendonsa an opportunity to know in advance who the witnesses were, it is very important that we prepare a proper defense on the basis of the charges actually filed and acted upon according to due process by the Board.

MR. MENDONSA: The Guild will not contend that this body is not governed by Landrum-Griffin. But Landrum-Griffin does not require that the actual charges that are referred to in our Section 1 be filed with the respondent. What Landrum-Griffin does require is that if a union brings charges against a member, it will present written charges to the respondent.

Now, that has been done. It has complied with Landrum-Griffin. The purpose for that is that the party

know what he has been charged with, and he is to be given an opportunity or a reasonable time to prepare his case. That certainly has been given in this case.

Now, as to what Mr. Miller stated, yes, he did make a request in writing by letter dated April 23 of 1973. He requested a list of the witnesses and exhibits that we intended to use in this case or in others, and we denied that, inasmuch as we did not feel that there was any legal obligation on our part to present either through our Constitution or at law the names of those witnesses.

Certainly we intended to protect these people who have to work for these companies and so on. Now, at no time did Mr. Miller or any of the other representatives of Mr. Victor request specifically the written charges as they are now requested. It is only being requested at this time at this hearing for the first time.

Now, I submit that this is a technicality, in spite of what Mr. Smith says, this is nothing more than a technicality to get this case dismissed. The fact of the matter is Mr. Victor has been served with the charges that the Board has brought against him and given to Mr. Franklin. Those charges or a copy or a representation of those charges are authentic. I have made a representation to that effect.

He has been given ample time to prepare his case -- more than ample time. I believe that at least two extensions of time at the request of respondent's attorneys have been granted in this case, and now I submit that there

is simply no lack of due process under Landrum-Griffin in this case. The man has been given the charges. He knows what the charges are. No request for any other evidence with respect to those charges has been requested, and he has had ample time to prepare his case, and he certainly has got ample representation here.

MR. KNOPF: We are going to go out for about two or three minutes. We will make it as brief as we can.

(A brief recess was taken.)

MR. KNOPF: On the record again, please.

We have asked Mr. Lavery to respond.

MR. LAVERY: Mr. Chairman, speaking for the Committee, which has just been in executive session, it is the unanimous finding of the Committee that with respect to Mr. Smith's motion, there has been substantial compliance by the Guild with all appropriate procedures.

Therefore, the motion is denied.

MR. SMITH: Mr. Chairman, before proceeding, I would call your attention respectfully to the point that a number of spectators appear to have been wandering in and out of the hearing room, and in view of your former ruling that it was a closed hearing and your exclusion of Mr. Curtis, I wondered whether the Committee would like to address itself to that.

MR. KNOPF: I would like to ask if there is anyone here that is not specifically involved in this case. I believe that only one person came in, that I can see. Anyone else?

MR. SMITH: Mr. Chairman, addressing myself at this point, in view of the Committee's ruling to the purported charges, I am proceeding to the next point. Addressing myself to the purported charges, I would now on behalf of Mr. Victor move to dismiss the proceedings on the ground that the charges or the purported charges as set forth in the document which was annexed to the letter to Mr. Victor of April 14, 1973, do not succinctly and explicitly specify the nature of the events and the date and place of its occurrence, as required by Section 1 of Article 10 of the Guild's Constitution and By-Laws.

Here I would simply call to the Committee's attention the fact that the notice to Mr. Victor states that he is charged with crossing the picket lines at Universal during the month of April 1973 for the purpose of rendering services for a company against whom the Guild was at such time on strike.

There is no reference there, Mr. Chairman and members of the Committee, no reference to any specific dates during the whole 30-day month of April 1973. There is no reference to the nature of the services allegedly rendered by Mr. Victor in the charges -- merely the statement that it was for the purpose of rendering services.

It is clear, I would submit, that the purported charges on their face do not comply with the requirements of the Guild's own Constitution which required that they be as explicit as possible, and the date and place of occurrence be specifically set forth, and that again,

Mr. Chairman and members of the Committee, is in Section 1.

I would also supplement this motion by the further point that in the same notice of purported charges, Mr. Victor is charged with having violated Section 1 of the Writers Guild Strike Rules and Section 1 as set forth in the notice, which simply states:

> "Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action."

I would submit that on its face, this rule is so vague and uncertain as to conduct prejudicial to the welfare of the Guild that no member could be held to any standard whereby his conduct would or would not be measured as a violation of so vague, uncertain and unspecific a rule, and on its face I would submit violates the requirements not only of due process and basic fundamental fairness that could only be charged with the violation of a specific definite prohibition, but also the precise requirements of Section 1 of Article 10 that the charges be succinct and explicit.

Therefore, on the basis of a clear absence of due process from the nature of the charges, I would move to dismiss these proceedings.

MR. KNOPF: Taking second things first, Mr. Smith, you read out of context Section 1, conduct tending to defeat or in any way --

MR. SMITH: I said that I would augment my statement.

MR. KNOPF: And I believe that your arguments for the dismissal of these charges really are covered by the motion the Board ruled upon.

MR. LAVERY: I rule that we take the same action as we did on the first argument and for the same reason, substantial compliance.

MR. KNOPF: I would like to continue with the introduction of exhibits.

MR. SMITH: Excuse me, Mr. Knopf. I am not rearguing any of the previous points. I have an additional motion to address to the charges and, at this point, Mr. Knopf, I would move on behalf of Mr. Victor for a clarification of these charges, taking, of course, the charges as set forth in Mr. Mendonsa's notice, in view of the clear conflict between the purported charges as set forth in the notice received by Mr. Victor and again specifically charging Mr. Victor with crossing the picket lines during the month of April, 1973, "for the purpose of rendering services" against a struck company.

A clear conflict, Mr. Chairman, between those charges and the position asserted by the Writers Guild of America, West, that the answer filed by the Guild on May 1st, 1973 to the consolidated complaint which was issued by the general counsel of the National Labor Relations Board in Case No. 31-CB-1203-2 and Case No. 31-CB-1223.

In that answer, Mr. Chairman, filed with the National Labor Relations Board, the Guild was responding

in part to Paragraphs 13a and b of the complaint of the National Labor Relations Board, wherein the Labor Board asserted -- and I am only briefly referring to their assertion in order to pinpoint the Guild's answer -- the Labor Board asserted:

> "Commencing on or about March 13th, 1973, respondent, namely, the Writers Guild in this case through its agent Alan Griffiths, by telegram threatened to discipline various of its members occupying positions described in Paragraph 9 above if they continued to cross the picket line and work for their respective employer in any capacity," and the positions that were described in Paragraph 9 just so you gentlemen will understand the positions to which the Labor Board refers, were the positions of producer-director, executive producer, associate producer, producer-director, executive assistant to the vice-president, and research director.

Those are the professions referred to in Paragraph 9, and it was also alleged by the Labor Board against the Guild, commencing on or about March 5, 1973, respondent, that is, the Writers Guild, through its agents Cary Wilber, Alan Griffiths, and Paddy, last name unknown, and by others presently unknown, by telephone threatened

numerous members occupying the positions set forth in Paragraph 9 above with fines and other disciplinary action, if they continued to cross the picket line to perform work in any capacity for their respective employer.

Now, that was the allegation made by the National Labor Relations Board, and the Writers Guild answered that in its answer filed with the Labor Board with the following statement:

> "Answering Paragraphs 13a and b, respondent, that is, the Writers Guild, admits that threats of discipline were made to some members in the manner and by the means alleged, but is without knowledge as to whether such members occupied positions described in Paragraph 9, and states that such threats of discipline were directed solely to dissuade members from crossing picket lines to perform writing work, as defined in the recently expired collective bargaining agreement with the association."

That is the answer filed by the Writers Guild with the Board, and thus, Mr. Chairman and members of the Committee, the purported charges against Mr. Victor on their face refer only to crossing the Guild's picket lines "for the purpose of rendering services" for a struck company.

But the Guild's answer filed with the Labor Board states that disciplinary threats to its members were addressed to "crossing picket lines to perform writing work".

I would submit, Mr. Chairman, that there is a clear ambiguity between the language of the purported charges and the official position taken by the Guild before the National Labor Relations Board, and that the charged employee, Mr. Victor, is entitled to a clarification of this ambiguity in order to be in a position to prepare his defense and to prepare an answer to the charges.

Mr. Chairman, Mr. Victor threfore moves for a clarification of the charges in the light of the Writers Guild of America's officially-expressed position for the Writers Guild, and, of course, it would follow that Mr. Victor move to a continuance in order to be able to prepare a defense to the charges after they have been clarified, because the Guild is saying to the Labor Board, "We are only attempting to discipline our members for crossing picket lines to perform writing work," and yet the charge against Mr. Victor says that he has attempted to be disciplined for the purpose of rendering services against the company.

And so that the record may be clear, I should add that where the charges as clarified may differ from the original charges, then all the procedures of Article 10 to which we have heretofore referred, the Article 10 of the Constitution and By-Laws would, of course, apply, and

the clarified charges which have to be filed in writing with the Executive Director under Section 1 would then have to be referred to the Board under Section 2 or order a disciplinary hearing under Section 4, the charges would have to be served on the Committee on the date set within 15 days, et cetera under Section 5.

All of this, Mr. Chairman, one, that the charges are clarified -- but I submit at this point that Mr. Victor is being asked to respond to clearly ambiguous charges, that the Guild is taking one position publicly and another position in these charges; and that due process requires that the charges be clarified.

MR. LAVERY: The mere fact that I don't ask for equal time doesn't mean that I agree with Mr. Smith. Once again, I would move that your handling of this motion be identical with our ruling on the first two, so far as I am personally concerned.

There is a lot of clarification from my point of view in the documents at hand. I move that we reflect the motion offered by Mr. Smith.

MR. MILLER: May I speak to you. The only thing that I am speaking to you now is that I wish to know which position is going to be followed here. Is it going to be alleged, and Mr. Mendonsa can answer that, whether Mr. Victor, if he did cross any picket line, crossed to perform writing services, or is it going to be alleged that he merely crossed, and the services which he performed once he crossed are immaterial to those provisions, in

which case it is in direct conflict with a matter now of public record, which is the answer before the National Labor Relations Board complaint.

I think some discussion is in order before you rule on it.

MR. KNOPF: I don't think so. My feeling is this. I am not a lawyer, but I know that you are arguing the case now, and certainly you already have and again will be given ample opportunity to make an opening statement, which you have been doing for some time now. You violated my procedure which is certainly all right, but I am going to take it back to my introduction of Trial Committee exhibits. Very shortly, I will be getting down to Mr. Mendonsa to make an opening statement, which will probably answer a great many of your questions, among them clarification of charges.

If you feel it necessary then, you will be given an opportunity to respond with an opening statement. Without even asking for a statement on that, I am going to continue.

MR. SMITH: Mr. Knopf, if I may address myself to your last statement. A series of motions which is being made on the behalf of Mr. Victor go to the validity and the legality of those provisions. I realize, sir, and I very respectfully understand, that the Committee is not a committee of lawyers, but it is a basic legal principle that where proceedings are invalid and unlawful and where a committee has no jurisdiction or power to proceed because of some

inherent illegality in the proceedings, that it is improper to go forward with the proceedings, and I would submit that the respondent must be given an opportunity to assert these contentions as to the unlawfulness of the proceedings.

MR. LAVERY: Mr. Chairman, I have no objection to that as a theory. If we have the ruling on this motion, and the facts don't have to be just what Mr. Smith says it is.

MR. SMITH: Now, of course --

MR. LAVERY: No. You have just said that these things should go to the basic validity. If you happen to be right, if you happen to be wrong, they don't go to the basic validity at all.

MR. SMITH: That's correct, and the Chair, as it has done, has the prerogative to make an adverse ruling, but the raising of them goes to whether or not this Committee is constituted to proceed, and I submit that Mr. Victor has a right to make arguments as to the propriety of the proceedings and the lawfulness of the proceedings before going forward and cannot be forced to submit to proceedings before the Board rules against them.

It is simply a case of submitting our arguments to the members of the Board, and I submit that these arguments have clear merit and are clearly predicated upon either the law or the Constitution, and I would respectfully request that we be permitted to raise these points so that they may be determined, because we believe that the proceedings here today violated the Constitution and violate the rights of Mr. Victor to be subjected to a

hearing before this Committee.

MR. LAVERY: Point of order, Mr. Chairman. Let's have a reasonably succinct rendition of what other motions are here, but I do suggest that I don't think anything constructive results from counsel all the time reminding us that we are going forward on a basic invalidity. This is a matter of opinion.

Now, we have said very little here this afternoon. I figure it now that you have been talking almost an hour. That is why I say that there has been a lot of clarification. At the very least there has been an opportunity for clarification. I am perfectly willing to hear these motions, but I do insist that at least initially this Committee is entitled to some inference that it too thinks is right. You can't be the only man in this room who thinks that.

MR. SMITH: I am merely submitting arguments on behalf of Mr. Victor. The Committee has the prerogative to rule against me. Mr. Knopf, I would also as a matter of expedition suggest that we do adopt the procedure that was previously considered, and that is to permit Mr. Victor to assert all of the motions seriatim and have the Committee reserve the decision on all of them, so that you may have before you all the different points which we intend to raise, and instead of having to rule on each one of them seriatim, make your determination after we have heard all of the different points, and if you will permit me to do that, I will address myself to the several remaining motions.

MR. LAVERY: Mr. Chairman, we moved on that at the

beginning of this, and it was Mr. Smith who wanted an immediate ruling on Motion 1. We had suggested at the time that we would hear them seriatim, but he asked us to --

MR. SMITH: The reason Motion 1 was different, sir, respectfully, was that if we presumed upon that we would get new charges, and that thereafter we would have a different set of charges. Now I am --

MR. LAVERY: I suggest that we go ahead, motion by motion, and follow the pattern that we have set up, ruling on each motion that we can, because that is what counsel asked for.

MR. SMITH: Thank you very much.

The next point that I would raise is that the proceedings as being conducted today by Mr. Mendonsa are in clear violation of Section 6 of Article 10 of the Constitution in that Section 6 requires among other requirements:

> "The Executive Director shall present to the Committee the charges and any evidence with respect thereto,"

referring to the Trial Committee constituted by the members here today. The Executive Director of the Writers Guild is not Mr. Mendonsa, as we all know, and I submit that, gentlemen, the Constitution of the Writers Guild is a contract between the Writers Guild and the members. The Guild is bound by the Constitution, and the members are entitled to expect compliance with the Constitution, and

when I raised these points, I have heard the comment that we were being technical. This isn't a matter of technicality. It is a matter of contract right and a matter of due process.

I would submit that where the Constitution states that the Executive Director has to present these charges to this Committee and where Mr. Mendonsa is not the Executive Director, that that is the violation of the Constitution. It is a violation of due process, and for that reason I would move to dismiss these proceedings, unless Mr. Mendonsa would like to respond.

MR. MENDONSA: My question simply to the Committee is, number one, how is David Victor prejudiced at all by the Guild's resident counsel appearing on behalf of its Executive Director in presenting these charges to the Trial Committee?

I think that he has not been prejudiced in his rights at all. Again, I think whether or not this is to be read literally, that the Executive Director has to be here to present the charges is something that can be interpreted by the Board of Directors, and I am sure that he can delegate his authority as Executive Director.

MR. LAVERY: Mr. Chairman, I was going to raise that point myself. I am sure all of us have seen many occasions when a district attorney in court has been represented by the assistant district attorney, and nobody challenged it. It seems to me that yes, indeed, we have a responsibility to our own Constitution, and we like to think that we are fairly familiar with it, and perhaps as accurate interpreters

of it as any counsel in this room, but to make it succinct, I will once again move the motion be denied.

I think that through Mr. Mendonsa we have adequate counsel repredsenting the Guild and all the issues.

MR. KNOPF: I think we can rule against that.

MR. SMITH: I will defer to the Committee's ruling with simply the comment that Mr. Victor didn't draft this Constitution, which said in plain terms that the Executive Director will present the charges to the Committee, and I submit that both Mr. Victor as well as the Guild should be bound by its own Constitution, and I will move, Mr. Chairman, to the next motion, which I would submit is by far the most serious motion made on behalf of Mr. Victor.

We move on his behalf to dismiss these disciplinary proceedings, because as I shall demonstrate, the proceedings are illegal and are being conducted in violation of the National Labor Relations Act, and since the proceedings are unlawful, the Guild and this Committee, I would respectfully submit, has no jurisdiction over Mr. Victor.

And this Committee knows Mr. Victor is an executive producer at the Universal City Studios and is well-known in the television industry. Mr. David Victor has been a producer for many years, and he has over the years acted as a producer on such television programs as THE NAME OF THE GAME, THE MAN FROM UNCLE, TODAY, DOCTOR KILDARE, MARCUS WELBY, OWEN MARSHALL, and many other television projects and, gentlemen, as television producer Mr. Victor is of course supervisor, as that term is defined in Section 2,

Subdivision 11 of the National Labor Relations Act, which states -- and in this respect, gentlemen, I am going to paraphrase, because it is a lengthy section -- but it defines the term supervisor as any individual having the authority in the interest of the employers to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline any other employees, and it then goes on to describe in some detail the general concepts of what constitutes a supervisor as that term is under --

MR. MENDONSA: At this point, may I interrupt, because I am going to object to that motion. Just basically, what Mr. Smith is trying to do here is try a case that is now being tried, and for the record that case is a hearing that has been opened in a matter before the National Labor Relations Board now, in which this is the very issue being tried.

No decision has been rendered by the National Labor Relations Board by any court with respect to the Guild's authority to discipline those particular persons. Mr. Smith has not at this time proven at all that Mr. Victor is a supervisor within the meaning of the Act simply by reading Section 211 in the National Labor Relations Act.

I think that this is just a matter of an attempt to try a case that is now being tried in its proper jurisdiction before the National Labor Relations Act, and I don't think that this Committee should be burdened with having to make a decision which is certainly not clear in the law at this present time.

MR. SMITH: Mr. Chairman, I would simply like to complete my presentation. I am simply trying to persuade this Committee, and I think I will be able to persuade you. Your own counsel has so conceded that position in documents issued by the Writers Guild.

If you would give me just a few more minutes to complete the presentation, I would simply like to state, gentlemen, that the courts in the National Labor Relations Board have recognized and have held that it is an unfair labor practice under Section 8(b)(1)(B) to attempt to impose discipline on a representative of an employer, and, gentlemen, the courts have held as well as the National Labor Relations Board that for the purposes of this rule, that is, prohibiting imposition of union discipline, a person who is a supervisor is to be considered a representative of the employer.

Gentlemen, I would just like to read a very short excerpt from a recent decision by the Court of Appeals in the District of Columbia, which simply summarizes this principle. I think that this should be in the record, because you gentlemen should be aware of this principle of law, which, as I will demonstrate in a moment, has been adopted and recognized by the Guild's own counsel.

MR. MENDONSA: Do you intend to present then the whole case including the dissent and the fact that it is now up for rehearing?

MR. SMITH: I believe, Mr. Chairman, I should be permitted to make my presentation and that if Mr. Mendonsa were

making his presentation I would certainly not interrupt him. I simply wanted to read from the summary of this principle in the case where the court stated -- this is the Court of Appeals for the District of Columbia.

The case is Electrical Workers vs. the National Labor Relations Board which was decided only in December of 1972, that in Section 8(b)(1)(B) of the National Labor Relations Board prohibits "union coercion or restraint of an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances," and then the court went on to say that the Labor Board and several courts, including this one, have recognized that this has much broader application. It prohibits indirect union restraint or coercion of an employer, established through the imposition of discipline upon the employer's representatives for actions performed by them within the general scope of their supervisory or managerial responsibilities.

Then the court goes on to say later in the opinion -- I am just going to make the principle that I am trying to express quite clear to the members of the Committee -- this court has also recognized the fact that the imposition of fines upon supervisory employees may coerce or restrain this employer in the effective selection of his representatives.

Then in referring to a previous decision, the court said in that decision:

"We gave our express approval to

the decisions which had interpreted Section 8(b)(1)(B) as prohibiting union discipline of supervisory personnel for acts performed by them in the course of their supervisory or managerial duties."

And the explanation of this principle of law is neatly summarized by the court in a sentence which reads:

"When a supervisor is disciplined by a union because of the manner in which he exercised his supervisory or managerial authority, whether or not he was applying a contract provision or adjusting a grievance, that disciplinary action necessarily impinges upon the supervisor's loyalty to his employer, thereby effectively depriving the employer of the undivided loyalty which he has the right to expect under Section 8(b)(1)(B)."

The court concluded:

"It is therefore intuitively obvious that if the principles underlying the Congressional enactment of Section 8(b)(1)(B) are to be given full effect, such conduct by a union cannot be permitted, as the National Labor Relations Board has properly recognized."

Gentlemen, I would think this statement of the law set forth in this particular case cannot be subject to any serious question. It is clearly a correct statement of the current law, and indeed, gentlemen, the Guild's own special counsel for Labor Relations matters, Mr. Charles Hackler, has so specifically advised the Guild that this is the present posture of the law as now interpreted by the National Labor Relations Board and by the courts.

Also, gentlemen, that memorandum which was issued by the Guild itself, which was dated April 9, 1973 and having the heading "Attention!" on the subject of strike discipline, a statement was made by the Guild's attorney setting forth the law as I have just characterized it.

I am not asking you gentlemen to accept my representation of what the law is. I am suggesting that you consider what the Guild's own attorney, Mr. Hackler, told the Guild.

The present posture of the law is, namely, that under the present law a union has no legal right to impose discipline on a person who functions in a supervisory capacity.

Gentlemen, I have prepared Xerox copies of this statement. I would like to give each of you one, so that you can follow with me.

MR. KNOPF: Is it your intention to read the entire statement?

MR. SMITH: No. It isn't, Mr. Chairman. I simply want to call your attention to the bottom of page 1 of this

particular statement.

"Below is a statement from Charles Hackler, the preeminent attorney in the labor law field and Special Counsel for the Guild.

"'For more than 20 years after the passage of the 1947 Taft-Hartley Act, the disciplining of union members for crossing lawfully primary lines established by their organizations was beyond legal question.

"'After recent changes in the membership of the National Labor Relations Board, this agency by a decided vote decided that the disciplining of supervisors as defined in the federal act for such anti-union conduct was improper.'"

This is, of course, the same principle of law as I have just referred to by citing the case from the Court of Appeals and numerous other cases and decisions of the Labor Board which are set forth in that authority and, of course, I could supplement the record by going on interminably and citing eight or nine additional cases which have made the same position quite clear, as set forth by Mr. Hackler, and, gentlemen, the fact is that then we have the present state of law accepted and acknowledged by Mr. Hackler, who deplores that it is the law and wishes the law were otherwise but is acknowledging and advising the Guild that a

union has no legal right to impose discipline on a person who functions in a supervisory capacity.

In the words of Mr. Hackler in the memorandum issued by the Guild itself and distributed to its members, such an attempt by a guild is "improper".

Thus, gentlemen, I would respectfully urge that you are presently engaged in a proceeding which your own counsel declares to be unlawful, since the attempted disciplining of supervisors is unlawful. This Committee, therefore, in attempting to pursue an unlawful procedure, has no jurisdiction over Mr. Victor, a producer who has supervisory status and is recognized throughout the industry.

I move to dismiss this purported disciplinary proceeding on the ground that the proceeding is illegal, and, in view of such illegality, that it is necessarily an absence of jurisdiction over the respondent Victor.

MR. POE: As a layman, so far I don't know what Mr. Victor does as a writer, and that is what we are here to find out. You can tell me that he is a supervisor or that he is an executive, but I don't know this yet, and I don't know what his writing record is and what it has been recently. That is what we are here to find out.

MR. SMITH: Undoubtedly you have made a good point, but unfortunately when I asked to clarify the charges without stating "crossing the picket line for rendering services for the company," that is the charge, so presumably if it is found that he did in part commit the charge, as it says,

he would be guilty of some kind of an infraction. That is precisely the clarification which I urged, and I submit that if the charges are clarified so that it refers to writing charges, then we have a different ball game, but I submit that at this point -- and please try to understand this -- I am not being technical at this point.

We have a gentleman, Mr. Victor, a recognized producer in this industry, being called before charges of crossing a picket line for rendering services. That is all it is. If he crosses a picket line for rendering services, he is guilty, and this Committee can impose discipline. I submit that that charge, that attempt to impose discipline for this charge, is illegal under the law as stated by Mr. Hackler.

MR. BLANKFORT: Mr. Smith, in my mind he isn't guilty yet, so how do you say that the submission of these charges assumes his guilt? I want to tell you I don't know whether he is guilty or not, because I am waiting to hear the evidence. I have heard your legal arguments, but I am eager to hear the evidence, because it may turn out that he is not guilty.

MR. SMITH: I am very happy to hear that, and, of course, we intend that he is not guilty. I am simply stating as a matter of law that for this gentleman, Mr. Victor, to be before this Committee on a charge of crossing a picket line for rendering services, when I think the Committee can take notice of the fact that as a producer he may well have been rendering services, he shouldn't be here before

this Committee on this charge Mr. Blankfort, and that is the only point I am trying to [illegible]

For this Committee to attempt to call him here on this charge, it is pursuing an unlawful procedure.

MR. LAVERY: Point of order, Mr. Chairman.

Is it Motion 3 that presumably has been supposed to --

MR. SMITH: No. This is a new motion.

MR. KNOPF: I would like to correct one point that you have made. This Committee hasn't called him here. We have been called here, as you have been called here.

MR. MONASTER: Mr. Smith, I recognize the jeopardy of a layman making statements just because it might be the brilliant thing to do. Perhaps he thinks that it will end up with the Supreme Court throwing us out on our asses.

MR. BLANKFORT: Clean that up.

MR. MONASTER: There must be a euphemism for "throwing him out," but I can't think of it at the moment. Mr. Victor is a member of this Guild, and I can only assume that his eligibility is based on his writing, so, at this moment, I have known Mr. Victor as a writer. We have been told by counsel that our Executive Director of our Board of Directors that we have complied with all the necessary regulation procedures with just concern for our own members, which would also apply to Mr. Victor, and that we are here because we have complied with all this.

Now, I would like to ask you a question. You have submitted a series of motions, all terminating with "I move

that the case be thrown out."

Now, none of us are lawyers, with the exception of Mr. Lavery and Mr. Mendonsa, but we have s[illegible]enough motion pictures to know that this is the open[illegible]g statement of any defense attorney. Throw in every motion you can in the book and hope that it happ[illegible], and when they are all turned down -- and they undoubtedly could be -- you go ahead with your case.

Now, are you here to submit a series of motions, hoping you will get one of them approved, and we will all go home?

MR. SMITH: I am here to submit a series of motions. Each one of them, I think, is valid. Each one is, I think, warranted and justified, and it is not going through the motions, because I believe that this Committee is constituted to make the decisions on these motions.

I have attempted to urge our position as clearly and as precisely as I can. I have shown you documentary evidence where I thought it might have been appropriate. I am trying to elicit rulings in this Committee, gentlemen, in favor of the positions which I urge, and I hope you don't consider the fostering of those motions as merely going through the motions of making an opening statement or whatever you said, sir.

MR. MONASTER: I wasn't saying "going through the motions" in the common sense. I was in the legal term. I have just this one question. If all these motions are denied -- and I think your presentation has been impressive

and awesome, and I congratulate you -- is it your intention, if all these preliminary motions to dismiss are not granted, to continue with the hearing, or are you just here to get a ruling on all these motions?

MR. SMITH: I should make it very clear for the record that I have interrupted the presentation of the motions, and there are a number of additional motions, all addressed to the propriety of these proceedings which have not yet been presented to this Committee, and which you will, I hope, allow me to be able to persuade the committee as to the merit for consideration of these motions, after I have had an opportunity to submit all of these motions.

I again hope that you don't feel that I am just trying to go through the arguments in order to make a record. I think that there is merit to each of these motions, sir. I think that there are reasons why this Committee should adopt the reasoning and the argumentation that I have made, and I would make this comment to something else you said, sir.

I think it is very important, as I said, that you have been advised by your counsel and the Executive Director and everybody else that what you are doing is proper.

Gentlemen, it is for you to make these decisions. You are the trial committee here. You can decide to throw this out. You are not here as puppets. I can address these arguments to you, because you have the right to rule on these arguments, and you have the right to make the determination as to whether these arguments are proper or not.

I am just trying to dissuade you from the comment you made, sir, because I am arguing to this Committee these motions. I think you should take it into consideration that when I show you a document from your own labor counsel stating that what you are doing here is improper, that he doesn't like the law but he says it is improper, that it is a persuasive argument that what you are doing is improper, and I think that if you were in Mr. Victor's shoes, you wouldn't want to be tried by a committee for doing something which the law says you can do.

In other words, I think if you put yourself in Mr. Victor's shoes, you will say that I have got a very valid position before the members of this Committee, and I respectfully contend that this Committee, as leaders of the industry, as people who are by no means of the rank and file of the entertainment industry but as people of prestige and dignity in this Committee, that I am trying to persuade you people for the reasons which I am stating in these various arguments, rather than just making a record for the returns.

MR. LAVERY: Mr. Chairman, if I had as much time as Mr. Smith, I think maybe I could persuade him, because I am a rather persuasive fellow, too. I think the Committee ought to recess for just a few moments and take this last motion under intensive consideration, and then, when a ruling has been made on that, proceed to the other motions.

MR. KNOPF: I would like one thing first. I want Mr. Mendonsa to reply to this specifically for a moment as

to what our rights are.

MR. MENDONSA: Yes. I would like to get a word in here. First of all, I will go along with Mr. Smith that you have got the authority to rule on these motions. But the motions that are being presented to you, I feel, and especially this last motion, are certainly an improper motion for you to make a ruling on, at least in favor of dismissal.

Mr. Smith tells you or read to you from a case which is now a decision of the District Court in Washington, D.C. -- may we have the citation of that? I don't have it.

MR. SMITH: Oh, surely, and I should have so stated for the record. The citation of this particular report is Union N.L.R.B. 57.22. I don't have the Federal Second citation of this. It is Electrical Workers of the International Brotherhood of Electrical Workers, AFL-CIO, and Local No. 134 vs. N.L.R.B. for the District of Columbia Circuit.

MR. MENDONSA: But I did want to point out that that is a case that was being decided by the District Court in the Circuit Court of Appeals in Washington, D.C. It is not a decision of the Ninth Circuit which governs the law in this circuit, and quite often the National Labor Relations Board ignores what one circuit says, at least with respect to decisions in other circuits.

I might point out to you that Mr. Hackler did state, in this document that was read to you by Mr. Smith, on April 9th that this very subject is now pending before

the District Court of Appeals in the Ninth Circuit. It has not been decided.

I will also point out to you that in the Electrical Workers case there has been a petition for rehearing which has been granted, and the Circuit Court of Appeals in Washington has not reheard that case yet, but they have granted a rehearing. This issue is not so much a matter of law that it is not being contested. This certainly is as the law is now enunciated by the National Labor Relations Board which has come about in the last couple of years, and to say that this Guild is in violation of Section 8(b)(1)(B) of the National Labor Relations Act because at this time this Guild is threatening to discipline its members who happen to be supervisors, is a rather broad statement, to say the least.

One, there is no evidence before this Trial Committee that Mr. Victor in fact is a supervisor within the meaning of the National Labor Relations Act. That is a question which will properly come up before the National Labor Relations Board in the hearings that are now pending before that Board at this very time.

I will also point out to you that Mr. Hackler, although acknowledging what the Board has done in the past, stated on page 2 of the notice of April 9, 1973 in the middle paragraph, and let me quote these now:

> "Extreme pro-management decisions are being tested by many unions which traditionally have bargained and obtained

benefits for persons who have some supervisory authority. Pro-test cases are on their way to the Supreme Court, including cases in the United States Circuit Court of Appeals which covers California."

In light of these facts, I have advised the Writers Guild of America, West, to follow the same policy as he goes on, and I underscore this in addition to the argument of industrial unions against this belated and unrealistic economic power bonus to employers. I have pointed out that there is a reasonable chance that even the Board will not extend its new doctrine to notify any of the members of the Guild for several reasons.

Now, those reasons, gentlemen, are being presented to the Board in the hearings that are going on now. We don't know what the National Labor Relations Board is going to hold with respect to the application of its prior rulings to this Guild. That is a decision that is going to be made eventually by an administrative trial judge of the National Labor Relations Board and probably the National Labor Relations Board in Washington, D.C. will consider it. It may go on from there to the Ninth Circuit and up to the Supreme Court. We do not know.

But the fact of the matter is that this case has not yet been decided. You should not take it upon yourselves to make that decision. It is a very esoteric argument that is going to be made in this matter, and I don't believe it should be put on your shoulders to make the decision for

either the association, Mr. Victor, and the National Labor Relations Board.

MR. SMITH: Mr. Knopf, give me just 30 seconds to respond to this, and I really mean this.

It is nothing upon the shoulders of this Board to make this decision. This Board has been told what the law is today. We are sitting today in this room. We are not sitting in a higher place. After all, these other test cases may or may not go up to the United States Supreme Court.

Mr. Hackler has conceded and in effect Mr. Mendonsa has conceded what the law is at this moment. What the law is at this moment is what we are doing here is illegal, whatever the test cases that may be decided, and I submit that we nave the Guild's concession, Mr. Hackler's concession, and Mr. Mendonsa's concession that the present state of the law today is that a labor union cannot impose discipline on a supervisor.

You, gentlemen, without making any esoteric decision as to what may or may not happen to this are bound by the law today, whether the National Labor Relations Board changes it or some court changes it. We know what the law is, gentlemen. There is no jurisdiction over Mr. Victor as a supervisor, and the case should be dismissed on the present state of the law. When the law has changed, as Mr. Mendonsa says it may well be changed, then we can come back and change it again.

MR. MENDONSA: May I say this, because I have been

accused of agreeing with what the present state of the law is with respect to this Guild. I have stated, Mr. Hackler has stated, and it is the position of this Guild that there is no present state of the law with respect to this Guild's right to discipline its hyphenate members. That decision has yet to be made. There is no present state of the law.

MR. SMITH: I think Mr. Hackler's statement reads for itself, and you gentlemen as writers can certainly read what Mr. Hackler said, and I think that speaks for itself, gentlemen.

(A discussion was held off the record.)

(Brief recess.)

MR. KNOPF: We will respond to your request for dismissal.

MR. LAVERY: Mr. Chairman, on behalf of the Committee, I am authorized to say with respect to Mr. Smith's last motion -- I think it was No. 4 -- anyway, the very last one, which dealt among other things with interpretations of various contemporary provisions, decisions and the validity of this proceeding from Mr. Smith's point of view.

It is the unanimous finding of the Committee that the motion is denied.

MR. KNOPF: Mr. Smith --

MR. SMITH: I would like to --

MR. KNOPF: May I, Mr. Smith, one moment.

I think perhaps, though, I said it off the record. I will say it on the record. These motions of yours are

fairly important to you, and I would like to hear them, and I don't think you should feel rushed. There was some concern on your part about the feeling that you had to get them out very quickly. We are going to be here for a while.

MR. LAVERY: This unpleasant reference was made early in the afternoon that with one exception we are a committee of laymen and there is one lawyer on the Committee. I don't want there to be any misunderstanding about this. I am not an attorney in California. I was admitted to the Bar in New York State in 1925, and I am currently a member of the American Bar Association, but I am not a practicing attorney in California.

MR. SMITH: Mr. Chairman, in view of the Committee's ruling with respect to the last motion and in particular with respect to the comment made by Mr. Mendonsa in his prior argument in opposition to that motion, wherein Mr. Mendonsa stated in effect that the very issue which I was attempting to urge in support of the motion was the issue now before you, the National Labor Relations Board.

In the hearing which is currently in progress before that Board where that very issue will be decided by the Board, in view of Mr. Mendonsa's statements to that effect and considering the possibility at least that the Committee might have taken that into account in their decision denying the motion, I would respectfully urge that, this being the case, the present proceeding should be continued to a time in the future after the National Labor Relations Board has issued its ruling with respect to the

issue which Mr. Mendonsa states is now before the Board, for this reason:

If it is a fact that the Board should rule that this particular labor organization, as all the other labor organizations in the cases which are assigned to the Committee, may not impose discipline upon supervisory members, if the Labor Board should rule in this very proceeding that the law as applied to the other labor unions will be applied to the Writers Guild, and it would therefore follow that this proceeding and the subsequent proceedings scheduled for the balance of this week are held by the Labor Board to be specifically illegal with respect to the Writers Guild, then all of the efforts that all of us, including the members of the Committee are going through this week, will be nullified and invalidated, thus producing all of your efforts during this week and in the forthcoming days.

I submit that it would be not only expedient and prudent but also the logical thing to continue this hearing and to continue the subsequent hearings to a later date when there is a ruling by the National Labor Relations Board on what Mr. Mendonsa characterizes as the precise issue, namely, the legality or illegality of these very proceedings in which we are involved today.

So for that purpose, Mr. Chairman, I would respectfully move that these proceedings be continued to a date fixed by the Labor Board.

MR. MENDONSA: I would like very much to respond to

that. I have an important telephone call. May I have a couple of minutes?

MR. KNOPF: Of course.

(A discussion was held off the record.)

MR. KNOPF: May we return to session, please.

Mr. Mendonsa, would you respond.

MR. MENDONSA: Yes. Let me respond to the last motion to continue the hearing until a decision was made by the National Labor Relations Board.

Number one, a decision by the National Labor Relations Board may not be the final word in this case. We don't know at this point. But at any rate the National Labor Relations Board hearings which would be convened today will probably go on for a period of at least two weeks. The decision that is rendered by an administrative law judge probably will not be rendered before two months, probably more likely four to five months. That decision will be appealable to the National Labor Relations Board. We can anticipate that the decision of the National Labor Relations Board will not come down for at least a year and from there may go into the courts, and it may be several years before we finally get a decision as to whether or not this Guild has a right under the law to discipline its hyphenate members.

I suggest at the time that the period is simply impractical to permit us to say that we will put these hearings off until that time. The witnesses' recollections will certainly be very fogged by then.

In any event, the Guild feels it has a legal right to proceed in these matters, and there is no reason for this body to put off its decision on the hearings until it is proven one way or the other, because the fact of the matter is there is no case law on this particular question as to whether or not this Guild, under the circumstances existing, has a right to discipline its members.

So I urge you to deny the motion.

MR. LAVERY: Mr. Chairman, I move that the motion be denied.

MR. SMITH: Mr. Chairman and members of the Committee, in view of your denial of the motion for a continuance, I would now move on a second ground. I move to dismiss for lack of jurisdiction, and that is very simply, and I can state this quite succinctly, that by this very disciplinary proceeding, the Writers Guild is attempting to assert its jurisdiction with respect to an activity for a service, namely, producer's services or producer's activities as to which the Guild is not the certified exclusive bargaining representative.

The Guild has no jurisdiction over Mr. Victor as a producer. The charges, on their face and in their present forms, since they have not been clarified, simply accuse Mr. Victor of crossing the picket lines "for the purpose of rendering services". This, of course, would include the producer's services he would render in this capacity as an Executive Director at Universal City Studios.

I would simply submit that the Guild here today

is attempting to assert its jurisdiction over a service and activity of Mr. Victor with respect to which the Guild is just not the exclusive bargaining representative, and therefore the Guild and the Trial Committee is acting beyond its jurisdiction. It has no jurisdiction on Mr. Victor, and for that reason, I move to dismiss these proceedings.

MR. MENDONSA: Can I respond?

MR. KNOPF: Please.

MR. MENDONSA: This Guild is not attempting to regulate his functions as a producer. It is simply implementing its rules against its members. It has a right to implement its rules against its members, regardless of whether or not they belong to any other brotherhood or affiliate or anything else. It has a right to discipline its own members.

Mr. Victor is a member, so I move that this motion be denied. In addition, I have had a telephone conversation with Mr. Hackler about the motion that was made earlier and the request for a clarification on the complaint and the answer. Although the motion was denied, I think that it is and should be on the record that the clarification is being made.

There has been a stipulation between the parties made prior to this hearing today that that answer or that paragraph in the answer will be amended to include services of any kind or in any capacity. Also, the answer or the complaint itself is being amended. It is somewhat not relevant to this issue, but it does point out that it is a little early in the proceedings of the National Labor

Relations Board to be alleging that the complaint or the answer has any argumentative merit here.

MR. LAVERY: Mr. Chairman, with respect to Mr. Smith's last motion, I move that it be denied.

MR. SMITH: Mr. Chairman and members of the Committee, I would now move to dismiss these proceedings on the ground that this panel as presently constituted cannot possibly act impartially in this proceeding. Gentlemen, with all respect to the members of this panel as individuals and as eminent members of the profession, the panel consists not of what we might call rank and file writers, but rather what I would call the elite of the Writers Guild, the persons who have been closely identified with the Writers Guild for many years, and in some cases since its inception some of whom have held high positions in the Writers Guild.

There is no suggestion in any way, gentlemen, that the members of this panel are not fair and honorable men in all respects. I simply submit that the accused, Mr. David Victor, is in effect entitled to be tried before a panel of the rank and file of the Writers Guild rather than a panel constituting the elite of the Writers Guild, past presidents of either the Guild or the radio branch or the motion picture branch.

I submit, gentlemen, that a trial before a panel so constituted of persons whose whole career and background with the association of the Writers Guild, as is the fact with the members of this Committee, simply denies Mr. Victor due process; that there cannot possibly be an impartiality

on the part of the members of this panel, however righteous and honorable you gentlemen may be.

I am addressing myself to the abstract concept of due process, and I submit for that reason that this proceeding should be dismissed and that a new proceeding should be constituted before a panel of rank and file members of the Writers Guild.

MR. BLANKFORT: I just wanted to ask Mr. Smith a question. In his contemplation of this hearing that Mr. Victor would get a more fair judgment if this trial board consisted of men who were not his peers. You made a very substantial argument that he is a very distinguished member of our industry, and though I have never been called a member of the elite before, it seems to me that you have persuaded me that Mr. Victor is.

Are you arguing that he would get, so to speak, a fairer hearing by people who are not his peers?

MR. SMITH: What I am arguing, sir, is simply that a panel constituted as it is of persons whose careers for many years have been associated with the highest echelons of the Writers Guild simply cannot act in a matter of such importance to the Writers Guild in the context of the strike.

I reiterate once again, there isn't the slightest question of the honorableness of you gentlemen, and I hope you appreciate that that is not the point I am making. I am simply stating that as a tribunal it goes to the very essence of due process, and I submit that a panel constituting,

again might I say, the elite of the Writers Guild over the years simply cannot act impartially in this context. For that reason I move to dismiss this proceeding before this panel.

MR. KNOPF: Mr. Smith.

MR. SMITH: Yes, sir.

MR. KNOPF: The men elected the Board which governs the Writers Guild. The Board chose us.

MR. SMITH: I appreciate that.

MR. KNOPF: It was therefore the determination of the elected representatives of the Writers Guild that chose us to sit in these hearings. I wish to persuade you with every confidence I have, we are eminently qualified to be impartial.

MR. LAVERY: Just a pleasant footnote. I think we should all be flattered at least by the nature of the objection that Mr. Smith raises, but it should be noted for the record that writers, even supposed to be the elite of writers, do not live in a cloister in Hollywood. We don't go around associating only with writers, and I might point out that past presidents have not always been exclusively presidents. The other day we had an attorney who discussed the matter of a blue ribbon panel, and he also said he would like to have a rank and file committee, and I said, "What do you mean? Writers who are not very good?"

"I would rather have a kind of random selection," he said.

So I said, "Would you be satisfied with a random bench, or would you like the best bench that you could get?"

Well, I move that the motion be denied.

MR. SMITH: I would simply like to clarify one point. I am sorry, Mr. Mendonsa. The point I am trying to make is this. Gentlemen, I think this dramatizes it. If a defendant was on trial in a court of law for a criminal charge, I wouldn't want a jury where every member of that jury was a police officer, when his life work was as a police officer. Even if there are 12 honorable men who tell the court, "I will be totally objective on this case against this robbery or burglary," I simply wouldn't want 12 professional people on a jury trying a burglary case who have been devoted to police enforcement.

What I am saying to you gentlemen is that a great majority of your career has been identified with the Writers Guild. That is commendable. You have become involved in your Guild, which shows an interest in other people in your profession. I am simply stating that this panel who have been so identified is tantamount to a jury of 12 police officers in a crime case.

For that reason I say, again with all deference, this cannot be due process here. There cannot be impartiality as much as you want impartiality.

MR. LAVERY: Identifying police officers with the Guild is not to me a very like comparison. I assure you there are probably quite a few of us on this Committee who don't joyfully serve. It is not a pleasant thing to sit on a

trial board like this and particularly to try to be as objective as you can at all times and places, but policemen -- We are not hanging jurors. We are not, and again I renew my motion to dismiss.

MR. MENDONSA: Well, if I were to read Mr. Smith's statements correctly, I believe he would prefer having a committee of non-writers, but aside from that, I know of no reason or no law or no cases that would prevent this Committee from serving and rendering decisions who would be held in violation of due process.

Many unions simply try their members by their board of directors or the governing body or the executives of the guild or union. But, in any event, I do not see, because of the better knowledge of Guild procedures or industry practices, that Mr. Victor would be denied due process in this case.

I urge that the motion be denied.

MR. KNOPF: The motion is denied.

MR. SMITH: Mr. Chairman and members of the Committee, the next motion is quite different from the motion that the Committee has just denied, and I hope the Committee will appreciate the distinction, because it is a very definite and clear distinction.

I would move, gentlemen, to dismiss the proceedings because this panel consisting of members of the Writers Guild simply cannot be an impartial hearing panel in this proceeding in the context of the existing Writers Guild strike; that in this context only third parties totally

from outside the Guild could even attempt to act impartially, and I would submit, gentlemen, that so long as the present Guild strike continues in effect and so long as the Writers Guild is attempting to enforce its strike rules incident to this strike, which, of course, is so important to the Guild, the Guild simply as an organization cannot afford to have any of its members found innocent of disciplinary charges, because such a finding of innocence would have a clearly adverse impact on the progress of the strike.

I submit, gentlemen, that no Guild member, whether it be you gentlemen or any other Guild member or least of all persons like yourselves so closely associated with the Guild on its highest echelon, can act impartially on this issue during the pendency of the strike.

You will recall, gentlemen, that the Labor Management Relations Reporting and Disclosure Act which Mr. Mendonsa concedes does apply to this proceeding requires a full and fair hearing on the disciplinary charges. Gentlemen, the essence of a fair hearing, the very heart of due process, is a total impartiality on the part of the hearing officers.

I submit, gentlemen, the only way that an accused member of the Writers Guild could be afforded a fair hearing in the context of this strike is either to constitute a hearing committee of persons outside the Guild who could have no possible interest on behalf of the Guild in the result of these hearings, or, gentlemen, to postpone the hearings to a date after the termination of the strike, when

the possibility of an acquittal could not threaten the success of the strike itself.

I therefore move, gentlemen, to dismiss the proceedings for lack of due process, if the hearing is to be continued before this panel, or in the alternative to continue the proceedings to a date after termination of the strike when people can be totally and objectively dispassionate as to the guilt or innocence of this particular respondent, Mr. Victor.

Wholly apart from the question of whether a finding of acquittal could threaten or damage or hinder in any way the effectiveness of the Guild's strike, I submit that there can't be impartiality by any member of the Guild in the context of this strike, and that because there can't be impartiality, there can't be due process.

I move to dismiss or in the alternative for a continuance.

MR. LAVERY: For the record, it should be noted that in, I think, the last case before this Committee, the individual was, I think -- even acquittal or conviction is a large word -- but the Committee unanimously found in favor of the individual writer. That was the last case we heard.

MR. BLANKFORT: Unanimously?

MR. LAVERY: Unanimously.

Now, with that in mind, I move that the motion be denied.

MR. MENDONSA: The record shows that I did read

Mr. Smith correctly. He does wish to have this tried by non-writers. But, in any event, I will urge that this Committee not take into consideration the strike or the effects of your decision on the strike in your deliberations.

MR. MILLER: Mr. Chairman, may I ask one question of Mr. Lavery. Was that Mr. Webb's trial that you referred to?

MR. MENDONSA: That is immaterial.

MR. LAVERY: I don't mind answering, but it wasn't Mr. Webb's trial.

MR. MILLER: Mr. Chairman, I would like to underline the basis of Mr. Smith's objection. Because you are all Writers Guild members and vitally concerned obviously with its future and with its present position. There are, as you know, a number of so-called hyphenates, whether they are writer-directors or writer-producers, who are not crossing Guild picket lines, who are not reporting to work. They feel very strongly that they should be allowed to do their producing work and their directing work. Even those who are crossing are very loyal to the Guild to the extent that they will not write and that they will not work with non-Guild writers, and they will not do anything that involves writing services.

However, they have been insistent on being able to perform their producing and their directing services, et cetera. Now, there are a number of hyphenates waiting in the wings to find out what happens here and what happens at the National Labor Relations Board.

I submit to you that if you come out with a finding, as the evidence may show here, that Mr. David Victor crossed the picket lines -- I am not saying he did, but let us assume the evidence establishes that David Victor crossed the picket line solely to perform producing services. That is all he did, his functions as an executive producer. And he did absolutely nothing that could possibly in any way be characterized as writing services.

Let us assume that this Committee comes out with the finding he did no writing and accordingly finds him innocent. I submit to you that the very integrity of the Guild's strike at this very moment and the very integrity of its picket lines might very well be threatened by such a finding on your part, and that, in the present context, the present posture of negotiations in the strike, that it would be very difficult for you, given your past affiliation with the Guild, to make such a finding knowing the impact it can have on the integrity of the strike at the present moment.

MR. KNOPF: Mr. Miller, I know you made these remarks for the record. I will assure you the integrity of this Committee is bound to no pressure on either side, not from our members and not from whatever pressure might come in from any other nature. We are independent thinkers. We are free thinkers, and I rest on that.

MR. BLANKFORT: May I, Mr. Chairman?

Mr. Mendonsa has reminded us, as if we needed it, not to include in our conversations of the cases here the

strike, and this is something that we remind ourselves of because we are not involved here with strike tactics, and essentially we are not involved here with the integrity of the Guild, as you point out. We have -- I say it for myself, and I think I may speak for the others -- we are involved here with the circumstances of this specific case that has come before us, and I think we would be doing our job improperly if we were to take your arguments into consideration.

I would like to ask you, Mr. Miller, what do you mean? I really didn't understand when you speak of hyphenates in the wings. What were you trying to say in that phrase? I am not sure that I understood you.

MR. MILLER: What I was trying to say -- and by the way I did not mean to impugn in any way the integrity of the individuals who are on it -- I merely said that the total context and the total picture makes it very difficult. What I mean by "hyphenates waiting in the wings" is that there are a number of hyphenates who partially perhaps out of moral support for the Guild's position and partially out of a fear -- and I don't want to go into that, because that is the subject of the National Labor Relations Board complaint -- but basically it may very well be a fear of discipline as a factor in their not coming to work.

The Guild has taken a position for many years, which you were familiar with when you were president. I am sure that the hyphenates coming to work during the strike could substantially harm the Guild's effectiveness during

the strike, and if there is a public pronunciamento that a present hyphenate who is working solely in this capacity as a producer is not going to be disciplined, then it may very well follow that a number of hyphenates who otherwise have stayed out would then come to work, because the rationale of Guild discipline being imposed upon them in the future is no longer there and for those reasons.

Now, understand, I did not mean at all to impugn your integrity or your freedom to decide, but it seems that the overall context -- because we all read the trade papers and we all know there is an 11-week strike going on and because we all know that there are picket lines -- in fact, that is the reason we are here -- this all creates a context which makes it difficult.

I would like to add one point in addition. The reason it comes up here and not before is -- at least in most of the cases I have read -- an 11-week strike is a long strike by most standards. The Herald Examiner is a different story, but by most standards an 11-week strike is a long strike; but in most cases where these cases have come before the National Labor Relations Board, the strike has been over, and members filed charges against another member for having crossed the picket lines or doing something during the strike, but the strike itself was already over, and then they imposed or sought to impose the discipline. That is why the question arises here, where it may not have arisen in other cases. They lead one to question the very reason why it was necessary at this time

to bring the charges rather than waiting until the strike was over and the decisions could be made in a more calm climate.

MR. SUSMAN: It seems to me that all of these questions that are now being raised could well be avoided simply by postponing these hearings until after the strike is over. We not only have the combination of the four of you gentlemen -- with the exception of, I believe, Mr. Poe -- being ex-presidents of the Writers Guild, and Mr. Poe, as I recall, being the president or the head of the Screen Writers Branch of the Guild.

In addition, you have a terribly intense emotional climate right now where, I venture to say, no person could be entirely objective about something that is as vital to your interests as the matters involved in the present strike, your interests not only as members of the Guild, but also as executives or former executives of the Guild.

On top of that, you have the trade paper pronouncements that come down every day with statements and counter-statements by each side involving the issues in the strike. Even on April 18th, 1973 in the Hollywood Reporter is a statement by Mr. Ronald MacDougall, the then president of the Guild, in which he states that the men involved in these hearings are predetermined and there is no question about it.

Why get involved in that kind of climate at this time with regard to these people? You avoid all of these problems, it seems to me, and it is an essential element of

fairness to postpone these hearings until the adverse impact upon any human being in the position that you gentlemen are would be vitiated and dissipated, so that calm and lack of emotion can determine the result, rather than the various pressures that are involved.

Now, certainly if this was before a court of law with this kind of background, I don't think there would be a doubt in any lawyer's mind that the court would do something to dissipate the impact of these various things, focusing in on these particular proceedings, either by a change of venue a la Angela Davis or others or by postponing the trial until the impact upon the people in the community has been dissipated, or, as in the case of Sam Shepard, a retrial simply upon the basis of the same kind of public announcements and the same kind of pressures that we are talking about, although in a different context.

It seems to me that it is not only good sense but also an essential element of fairness to just defer these kind of hearings until the matter assumes a more dispassionate aspect than now exists.

I would like to add those as supplemental reasons for the motion now being made.

MR. LAVERY: Point of order, Mr. Chairman. With all due respect to counsel, we have already disposed by motion on the question of continuing this proceeding to a time past the National Labor Relations Board final decision. This is something that has already been voted on.

MR. SUSMAN: I am not suggesting that. I am suggesting

merely a time later than now, hopefully a time after the strike is over.

MR. LAVERY: I am sorry.

MR. MENDONSA: Asking that this hearing and other hearings be postponed until the end of the strike is asking for an indefinite period of time. I don't know when the strike will end. Nobody knows when the strike will end. There is no way. This is a long strike. We anticipate that it may go longer, maybe much longer. We have no way of knowing.

Justice always demands that a man be tried as quickly as possible, and again we have urged that this Trial Committee not take into consideration any aspects of this strike or the impact that their decision might have on hyphenates in the wings or any other members of this Guild or on the negotiating committee or any other persons.

MR. ZACHARY: You will have to excuse me. I think I am losing my voice. But the points raised earlier, although you did rule on them, the technical points about being a copy of the charges and making the charges more explicit, could also be cured if the trial was put over to a later date. Copies of the charges could then be served. They could be made more explicit if a new date could be set for the hearings after the strike is over, which would cure many of these objections. After all, we do want to achieve something that will survive our presence here today. If you are going to quote motions that can be set aside because they are improperly conducted or commenced, I think you

would be most anxious to do everything possible to make sure that the proceedings that we are going to go through are meaningful.

I think the delay in the proceedings could serve as a further purpose of enabling the Guild to properly commence the charges and bring them before this hearing with the Constitution of the Guild.

MR. LAVERY: I hate to be so technical, but there still is a motion on the table that we didn't finally dispose of. Before we conducted this discussion, the motion was from Mr. Smith that this Committee disqualify itself, and I offer to reject that motion.

MR. SMITH: I believe, Mr. Chairman, if I may clarify the motion, because I did in fact make the motion, the motion is that at this time during the pendency of the trial when, as we have argued and as Mr. Susman rather eloquently expanded, I submit that an impartial judgment by any committee in the Writers Guild is simply an impossibility. At this point I submit that we continue the hearings until a time when the strike has been terminated, when tempers have cooled, when rational men can dispassionately deal with this, when the pressures generated by the existing strike no longer exist, when the fact that the Guild's strike efforts must be severely damaged by publicity as to the guilt or innocence of the accused in these hearings, and the publicity must hurt the Guild, I move that the proceedings be continued to a time after the strike ends, whatever that time may be.

Now, that is the pending motion, and, Mr. Lavery, to clarify --

MR. LAVERY: No. I am sorry. I have a pretty good memory for these things. The motion about the blue ribbon panel thing and all that was in essence that we should disqualify ourselves. We did not actually take a vote on that, and then, properly enough, there were other discussions from other people.

Now, this motion here that you were discussing is not the motion I am trying to dispose of. Yours is a motion about continuation.

MR. SMITH: Mr. Lavery, it was an alternative motion. I first moved on the blue ribbon elite panel. The Committee denied that. Then I made a separate motion. I tried to in a preliminary statement say I was adding it to the prior motion, the initial motion, as an alternative motion. It is an alternative. I asked for one of two alternative measures. One was that the committee determine that in the context of the strike it can't be fair and impartial, and in the alternative, if it denies that phase of it, to grant a continuance during the strike.

Now, that is the pending measure, Mr. Lavery, and I would submit that the alternative relief should be granted for the Committee, for the reasons stated not only by myself but for Mr. Susman.

MR. POE: The charges against these writers are serious, and I would not like to see them hanging over them. I would like to clear them up and give them a chance

to defend themselves. To be acquitted of these charges as speedily as possible, that is justice. To leave them hanging is to give your clients and the other accused writers a sense of onus in the community. I think it is unfair to continue these proceedings until after the strike, to leave these accusations hanging.

MR. SMITH: But, Mr. Poe, justice demands impartiality, and the motion urged upon yourself and the remaining members of the Committee are that there can't be impartiality in the context of the strike, and I believe that is the greater end of justice. That these respondents be tried in the context of an existing strike, whether there can be any thought that the Guild would be adversely affected by a determination, I submit simply that when all of this if over, and when we can look back dispassionately on all the things that have happened during the strike, that is the time when these charges, if ever, should be tried. That is the time when Mr. Victor and the other respondents should be tried, and not in the framework and the context of this strike with all its extreme emotionalism generated by headlines daily in the Hollywood Reporter interviews.

All of those headlines screaming across the top of the trade papers, this is just the framework and the countenance, gentlemen, in which this trial should not be held.

MR. BLANKFORT: We read right through those Hollywood Reporter headlines. We don't take them seriously. We know exactly what the Reporter and Variety will say. So is

it not really an advantage that we are experienced in the Guild and the industry? If I thought for one minute truthfully that I was either emotional now or would be less emotional after the strike's end, I would disqualify myself. I am not sure that the emotion of the rank and file members in any case would be less heated after the strike is completed, because the strike might be a failure. We might not win the strike. That would make the emotion of the Guild much more heated than it is now, so, taking Jim Poe's point, I do think ultimately in the last analysis we would be much more objective, as we are, and I think it would be presenting your clients in a much more serious light to have some decision made about their position vis-a-vis the Guild as quickly as possible.

MR. LAVERY: I would move that the last motion of Mr. Smith be denied.

MR. KNOPF: For my own clarification, would someone state it?

MR. SMITH: The pending motion is an alternative motion. It requests alternative relief. The first alternative is that the present proceeding be dismissed because it is a violation of due process to attempt to conduct these trials in the context of the existing strike, for all the reasons which Mr. Susman stated and I have stated.

In the alternative, that the present proceeding be continued until a date after the termination of the strike, whenever that may be, when calm, dispassionate minds can look back on historical facts rather than, as is

would be considered, an atmosphere of all sensationalism, many charges, countercharges, emotionalism, all of which have been generated by this strike.

MR. LAVERY: I vote "no". I want to make it absolutely clear that when I used to be the president of the Guild, there were no alternative motions. I move that it is the essence of this Committee with respect to both phases of the alternative motions our answer is "no".

MR. SMITH: Mr. Chairman, the final motion which I would make addresses itself particularly to the capacity of one of the members of this Committee, Mr. Knopf, and I know, Mr. Knopf, that you appreciate the fact that in making this motion I am addressing myself to the same concepts as in the prior motions. In no sense am I addressing myself to any question of your own integrity or fairness as an individual.

I would move at this point to disqualify Mr. Knopf from participation in this panel and, therefore, to also dismiss the proceedings, because the panel does not consist of an appropriate quorum of the five required members. The reason for this is that Mr. Knopf has been so closely identified with the entire conflict involving the hyphenate issue, and in particular that Mr. Knopf as an individual was a plaintiff in the litigation which was filed and which was tried in the Superior Court of the State of California for Los Angeles County, in which Mr. Knopf individually sought relief as a plaintiff, which relief, if granted, would have invalidated the collective bargaining agreement between the

Producers Guild of America and the Association of Motion Picture and Television Producers, which relief, if granted, and which was sought by Mr. Knopf as plaintiff in that action, would have held the Producers Guild of America to be an invalid, illegal, and not a bona fide labor organization.

The fact that Mr. Knopf participated in this launching of this litigation, was the principally first-named plaintiff in this organization, the fact that the litigation is a matter of judicial record was addressed to the whole hyphenate conflict, in particular the producer-writer hyphenate conflict, the fact that the primary issue there, the underlying issue in that litigation, arose from the dispute between the Producers Guild of America and the Writers Guild, wherein the Guild directed its producer members to cross Writer picket lines of the Guild to perform producer functions during a Writers Guild strike, whereas the Writers Guild asserted that writer hyphenates could not cross picket lines, the fact that Mr. Knopf has been so intimately identified with this whole particular controversy, the fact that the whole problem is at the very heart and essence of this particular disciplinary hearing, because Mr. Victor is a hyphenate, a producer-writer hyphenate.

I simply submit, for all the reasons that were stated before with respect to the question of fairness and objectivity, that Mr. Knopf in particular cannot possibly, however well he may attempt to, cannot possibly be

dispassionate and objective on the issue of the conduct of a producer-writer hyphenate, and for this reason I would respectfully move to disqualify Mr. Knopf and to hold that the panel is not validly constituted with Mr. Knopf as a member.

MR. MILLER: May I support his arguments. I believe this is particularly so, and again not reflecting on your integrity as an individual, whereas you must know Mr. Victor is active in the Producers Guild of America and is in fact on the board of directors of the Producers Guild of America. In fact, he was directed by the Producers Guild of America to continue to perform his services as a producer for his present employer.

Now, as you know, Section 4 of Article 10 requires that the Trial Committee be members in good standing, "none of whom is interested in the proceeding other than as Guild members". Now, I suggest that because of your close association with that lawsuit, being the named plaintiff, that it be difficult, if not impossible, for you to consider in any way in the matter of defense that Mr. Victor or any other producer hyphenate was functioning pursuant to instructions from the Producers Guild or under the jurisdiction of the Producers Guild or its collective bargaining agreement. No matter how dispassionately you might associate yourself with your function here, you are now plaintiff in a lawsuit which is now proceeding through the courts, and by the very recording of your own Constitution on the face of it would be disqualified from entertaining the subsequent defense that

Mr. Victor or other producer members of the Producers Guild will, of course, have to raise.

MR. MENDONSA: Number one, this action that is being presented to this Committee now has nothing to do with the Producers Guild. The lawsuit that is pending between the Writers Guild and the Producers Guild, and, I think, most important in this case, it seems to me that this argument is raised at this time simply to get a delay in this hearing.

The name of Mr. Christopher Knopf was presented to Mr. Miller at his request on April 27, 1973 in my letter to him. This is the first time that we have had any discussion that they intended to challenge Mr. Knopf's participation on this panel. His name was included among others, and we indicated that only five would appear to hear this case.

The reason, I suspect, that he requested the information and the reason we gave it to him was simply to give him the opportunity to have ample time to make his challenge of any of the people on the Committee. He so requested. We certainly, if he would have made the request, would have considered it. But to raise it at this time is nothing more than a tactic to delay this hearing. I don't think it should be granted.

MR. SMITH: I think a short answer to Mr. Mendonsa's statements is that the time to raise the objection is at the proceedings itself. I don't see any reason why an objection of this character had to be raised before. This is the time to raise the objection. Before it would have

been out of proper time.

MR. LAVERY: Mr. Chairman, isn't there something a little naive about this latest position on the part of counsel? Are we to infer that the only objective personalities left in this town are those who are such eloquent pleaders for particular individuals? That those who sit as judges are presumed not to be men of wide-angle vision? Are we to believe that all but the lawyers who come in with what really are miniature briefs are objective people? They really treat the law and all relevant situations with that beautiful wide-range vision.

Now, really. What would happen to legal counsel in this town if every time they took a new case in a related field and not always on the same side of the issue? It would be a short law practice, wouldn't it?

They would say, "Well, I can't have him, you know. He argued such-and-such a case months ago, and he was on the other side of this."

It is not possible. I move, Mr. Chairman, that the motion be denied.

MR. MILLER: Mr. Chairman, can we ask for a statement of your position for the record.

MR. KNO[illegible] I don't feel compelled to make a statement. I feel totally qualified to be eminently fair.

MR. MONASTER: To ask a person to say that he is not biased and prejudiced is more than an argument. It is an insult. There is no need for Mr. Knopf to have to demonstrate to you gentlemen that he is a Guild member, that he

is a member of this thing. You have labeled him "elite", because the rank and file considered him competent and fair in his judgment. Lately we have had to make decisions affecting our own membership. I imagine that the decision of the various members of the Guild to vote for these various offices was based on the fact that we would not bring to our decisions personal dislikes, political viewpoints, color, religion, hair, height, width, and in spite of your constant reiteration that this is not meant to impugn, you have very clearly told us fairly eloquently that there is no conceivable way that we can do anything but find this man guilty. That is what you have told us.

MR. SMITH: I am sure that Mr. Knopf realizes that no attempt was made to insult him.

MR. MONASTER: I am not sure he should.

MR. SMITH: I think he should, and I think he should appreciate that the point is being raised that sometimes the absence of impartiality is superimposed on people by extrinsic circumstances. However well-intentioned they may be in their own hearts, I think the members of this Committee appreciate that.

MR. LAVERY: Mr. Chairman, I will repeat myself, because it is the only way of getting a point clear into the record. The last decision of this Committee was in unanimous favor of the individual writer. Now, you may say that we can't be impartial, but as a matter of record the last decision of this Committee was unanimously in favor of the individual writer who was being heard.

MR. MILLER: Mr. Lavery, may I address myself to Mr. Monaster? Let me sort of analyze the point we were raising in connection with Mr. Knopf. Assume that I were a member of the Writers Guild, and the Writers Guild told me to go to work, and you had filed a suit in Superior Court saying that the Writers Guild is not a bona fide labor organization. It is a collective bargaining agreement, which purports to govern my activity and should be set aside, and then you sit in judgment of me, and one of my defenses is that the Writers Guild told me to cross the picket line.

Now, having been a plaintiff, no lawsuit that now is almost four years old can go through a Superior Court trial and outline the motions. The suggestion is there that there is a possibility that, at least as to that portion of my defense, the Guild, the organization which you contend is not valid but which I contend on the public record might be somewhat closed to that portion of my defense, and that even on the most subconscious level you might find it very difficult to have an open mind, if I am relying on the fact that the very organization which you contend is not a valid organization is the one that directed me to perform those activities.

That was the only suggestion we were making here in connection with Mr. Knopf. I certainly did not intend to cast aspersions on his integrity or his ability to decide these issues.

MR. KNOPF: I didn't take it as such, but I tell you

this, that I make no connection between this hearing and the PGA-WGA conflict. It never entered my mind for a moment. Really, though you raise the point, it just simply never entered my mind.

MR. LAVERY: I will call for a vote on the motion.

MR. KNOPF: So it is denied.

MR. SMITH: Do you have any further motions, Mr. Susman?

MR. SUSMAN: No, not at this time.

MR. MENDONSA: I have no motions.

MR. KNOPF: We will take a short recess to make our telephone calls home.

(Brief recess.)

MR. KNOPF: We are in session here. I am going to return to the introduction of Trial Committee exhibits.

This is a copy of the charges and a cover letter sent by certified mail to the respondent on 4-14-73 with a signed return receipt attached. I have marked these as Trial Committee's Exhibit No. 1, and the objections to the receipt in evidence of the Trial Committee's Exhibit 1 have been given, I believe.

MR. SMITH: The objections were overruled.

MR. KNOPF: Right, but I will accept the fact that you have spoken.

MR. SMITH: We have made our objection on the record, and the objections were overruled by the Committee.

MR. KNOPF: I have marked as Trial Committee's Exhibit No. 2 a two-page letter requesting a continuance of the hearing dated April 23rd, 1973 addressed to John

Mendonsa, Writers Guild of America, West, and signed by David Miller of Loeb & Loeb.

I have also marked as Trial Committee's Exhibit No. 3 a one-page letter requesting a continuance of the hearing dated 4-25-73 addressed to John Mendonsa, Writers Guild of America, West, signed by David Miller of Loeb & Loeb.

MR. MILLER: Are we going to be allowed to examine those? The only reason I ask is that I don't recall making more than one request for a continuance.

MR. KNOPF: I have one more entry, and then you can ask anything you wish.

I have also marked as Trial Committee's Exhibit No. 4 a two-page letter granting a continuance to May 21st, 1973 dated April 27th, 1973, addressed to David Miller and signed by John Mendonsa, Resident Counsel for the Writers Guild of America, West.

Is there any objection to the receipt in evidence of Trial Committee's Exhibit 2, 3 and 4?

MR. SMITH: No objection, Mr. Chairman.

MR. KNOPF: Please note that they are received.

(Whereupon, the documents referred to were marked Trial Committee's Exhibits No. 1, 2, 3 and 4, respectively, for identification by the notary public, and were received in evidence.)

MR. KNOPF: Do the parties wish to make opening statements? Mr. Mendonsa?

MR. MENDONSA: I intend to prove Mr. David Victor did cross the picket lines at Universal City Studios during on or about the first week of April of 1973 and did in fact cross the lines thereafter during the month of April; that he did do so in violation of this Guild Strike Order; that the Guild was on strike against Universal City Studios at that time; and that he thereby violated Sections 1, 12 and 13 of the Rules of Conduct of Members during a Strike, which related to February 20th, 1973 as stated in the charges which are a part of Trial Committee's Exhibit No. 1.

MR. KNOPF: Mr. Smith?

MR. SMITH: Well, rather than make an extended opening statement, Mr. Chairman and members of the Committee, I will simply incorporate all of the subsequent points that were made in this series of motions with emphasis upon the fact as stated at some length in support of our motions that the charges on their face which accused Mr. Victor of crossing the Guild's picket lines "for the purpose of rendering services" -- These charges on their face are addressed to circumstances beyond the jurisdiction of the Guild, beyond the jurisdiction of the Trial Committee, and are susceptible to an interpretation that the services rendered by the respondent after crossing the picket lines could have been services of any character whatsoever and not merely writing services.

The only services over which this Guild conceivably has jurisdiction would be writing services. The statement made by Mr. Mendonsa to the fact that Mr. Victor crossed

the picket lines in itself suffices to establish, I would submit to the Committee, that there is no basis, even if Mr. Mendonsa's statements are proved by competent evidence. There is no basis for imposing discipline on Mr. Victor, because the Guild has not established the rendition of services over which this Guild has jurisdiction and has not established the only area in which it would be conceivable that this Guild would be able to impose discipline, namely, if the respondent crossed picket lines for the purpose of rendering writing services.

However, I will defer any kind of extended statement until the conclusion of the case to be presented by Mr. Mendonsa.

MR. KNOPF: Mr. Mendonsa, will you proceed, please.

MR. MENDONSA: I will call as our first witness Betty Anderson.

BETTY ANDERSON,

called as a witness on behalf of the Writers Guild, testifed as follows:

EXAMINATION

BY MR. MENDONSA:

Q Mrs. Anderson, will you state your name for the record, please.

A Yes. I am Betty Anderson.

Q And are you a member of the Writers Guild of

America, West, Inc.?

A Yes, I am, and I have been since 1966.

Q And are you now presently serving on the Strike Services Committee of the Writers Guild of America, West., Inc.?

A That's right.

Q And how long have you been so serving?

A Since my assignment to that early in the strike. I served one week out of every three from 8:00 to 1:00 in Mark Rogers' group.

Q Will you give us a brief description of your duties at the Strike Services Committee or on the Strike Services Committee.

A The strike headquarters has a regularly-assigned administrative staff and follows out the policies set by the Strike Committee, as they are amended or approved, as to policies which are necessary to the routine functioning of the picketing schedules. It requires a great deal of administrative effort to adjust the regular time service to morning and afternoon shifts, and the same people work together so that things are smooth and efficiently run.

Q What are your functions particularly on the Strike Services Committee?

A On that morning I was performing the administrative function having to do with the card files and answering the telephone which is on that table.

Q You say "that morning." Let me direct your attention to April 10 of 1973.

On or about that date, were you working at the strike headquarters?

A Yes, and I answered the telephone.

Q You did answer telephones as part of your function?

A Yes.

Q On that day, did you have occasion to have a telephone conversation with David Victor?

A Yes. Mr. Victor called around 9:00 o'clock, and he was very friendly. He said he had been out of town, and he promised to call upon his return. He got his picket assignment. He wanted to fully support the Guild strike. He had been out of town, and he had promised to call on his return to get a picket assignment, and he was willing to fully support the Guild's strike, and that he was available for an assignment, and I asked him then if he had a preference, that when it was possible we would honor his preference for a particular place to picket.

And he said that he didn't really, that he couldn't picket this week, but he would be available the following Monday.

And I said then, "We'll be able to get in touch with you later. It will be necessary for me to check our schedules to find out where you would be most needed."

He said, "Well, you can reach me anytime. I'm in my office on the Universal Studios lot." He said, "You know, I'm preparing a picture here. I'm not writing. I'm doing some pre-production work. It's very important."

He went into quite a lot of detail about the name

of the picture.

Q Do you recall the name?

A No, I don't. It has sort of slipped out of my mind. Perhaps I knew I wouldn't be able to recall it later, but I didn't realize at the time that it was that important.

So I said to him, I said, "Well, Mr. Victor, the fact that you are at Universal, is that the phone number where you are asking me to call you?"

And he said, "Oh, yes. I'll be here every day."

I said, "Mr. Victor, that is in violation."

He said, "Oh, honey, you understand I'm not writing. I'm preparing a picture for production. There is a lot of pre-production stuff that has to be done."

He said, "Yes, I'm sure that I'm not writing. I want to have a picket assignment, but you have to understand that --"

I felt at this point that somebody's stronger voice than mine was going to be required to be -- Cary Wilber came into the room at that point.

And I asked Mr. Victor if he would like to speak with Cary Wilber, and he said he would like very much to speak with Cary Wilber, so I called Cary over, and I asked Mr. Victor if he would wait a moment while I explained to Cary, and I did that, and Cary came on the telephone at that point.

Q Did you have any further conversations with Mr. Victor?

A No.

Q After that time?

A No.

MR. MENDONSA: I have no further questions.

MR. SMITH: I have no questions.

MR. MENDONSA: May I ask that the witness be excused?

MR. KNOPF: Yes. Thank you very much.

MR. MENDONSA: We call as our next witness Cary Wilber.

CARY WILBER,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Mr. Wilber, will you state and spell your name for the record.

A C-a-r-y W-i-l-b-e-r.

Q And are you a member of the Writers Guild of America, West, Inc.?

A Yes.

Q And approximately how long have you been a member of the Guild?

A About 20 years.

May I correct that. About 13 years Writers Guild, West, and previously Writers Guild, East.

Q For a total of 20 years?

A About 20 years, yes.

Q Are you presently a member of the Strike Services Committee?

A I am co-chairman of the Strike Services Committee.

Q And how long have you been co-chairman of the Strike Services Committee?

A Since the committee was formed, approximately three months before the strike commenced.

Q I want to direct your attention to on or about April 10 of 1973.

Would you give us a brief description of your duties on or about that date on the Strike Services Committee as co-chairman of the Committee.

A Well, in general, the duties were superintending the maintenance of the picket lines. Superintending the activities of the house committee at strike headquarters.

Q Now, by superintending, what specifically do you mean?

A Determining where pickets would be used, making certain that we had sufficient picket strength, settling any problems or disputes that may have arisen between our telephone committee and the members of the Guild who were called for picket duty.

Q By settling disputes, do you mean talking to a few members?

A Yes.

Q Directing your attention to April 10 of 1973, did you on that date have occasion to speak with Mr. David

Victor?

A Yes.

Q And was that conversation on the telephone?

A Yes.

Q Did you identify yourself to Mr. Victor?

A Yes.

Q Did he identify himself?

A Yes.

Q Would you tell us now what Mr. Victor said to you and what you said to him in that telephone conversation.

A As I recall, a member of the telephone committee called me over and stated that David Victor was calling from his office at Universal. She wasn't quite certain how to handle it. I spoke to Mr. Victor and told him that by being in his office he had crossed the picket line and was in violation of the strike rules.

Q And what did he say to you?

A He stated that he was in there going through pre-production on a motion picture, that he felt under the terms of his contract with Universal he was obliged to cross the picket line. He assured me that he was not doing any writing duties but that he felt that as a matter of conscience and principle he should respect his contract with Universal Studios.

Q Did you say anything more to him then?

A Yes, I warned him that he was in violation and that a complaint would have to be filed with the disciplinary committee if he continued.

Q Was anything else said in that conversation that you can recall at this time?

A No. It was quite a pleasant conversation. At the conclusion, Mr. Victor said that we had not done any work together in quite a long time.

Q Was anything else said with respect to his possible violation of the strike rules, or was that the end of the conversation?

A Only that he would continue to report to his office as an executive producer.

Q Now, after that conversation, did you have any further conversations other than conversations with Mr. Victor?

A Not that I can recall.

MR. MENDONSA: I have no further questions.

MR. SMITH: No questions, Mr. Chairman.

MR. KNOPF: I have a question, if I may.

Mrs. Anderson said in her testimony that in her conversation with David Victor he said he could not picket that week but that he was available to picket thereafter. I believe you said that he would be notified about a picket assignment thereafter.

Was he reassigned to picket duty, do you know, Cary?

THE WITNESS: Yes. I believe that he was assigned.

MR. KNOPF: Did he picket?

THE WITNESS: Not that I know of personally.

MR. KNOPF: Was there any specific report to you as to

whether he did or did not?

THE WITNESS: No. That -- any report of failure to picket would have gone straight through to our people responsible for compiling disciplinary reports.

MR. KNOPF: Is that information available?

MR. MENDONSA: Well, no charges have been brought by the Guild against Mr. Victor for refusing to picket.

MR. KNOPF: I'm well aware of that. I'm curious about one line reported to Miss Anderson, that he said he wanted to fully support the Guild strike.

MR. BLANKFORT: Could we find out, John, one way or the other whether he did in fact picket?

MR. SMITH: Well, I would respectfully submit, Mr. Chairman and members of the Committee, that we simply have no charge here one way or the other that Mr. Victor refused to picket or failed to obey a picket order. That has not been set forth in any of the charges. There has been no attempt to prepare any defense to that, and I would submit that is really irrelevant to the issues that are before the Committee.

I most respectfully suggest that it would be inappropriate to go into that. It would be purely peripheral to go into that before the Committee.

MRS. ANDERSON: Am I permitted to speak out of turn here? I think that I might answer that. When I was asked what happened about the picket assignment for Mr. Victor, and I was told that since he was being put in discipline, that he was not put on a picket assignment at this time.

MR. KNOPF: In other words, there was no reassignment?

MRS. ANDERSON: No.

MR. MILLER: Also for the record, I would like to point out that Mr. Victor will be testifying in the National Labor Relations Board proceedings. In that affidavit Mr. Victor says in a sworn statement that he did talk to the Guild, although he says it was Alan Griffiths, and he said, "I informed him that as a writer I was willing to do whatever was needed, including performing picket duty at this point."

MRS. ANDERSON: I believe that was later in the day. I had suggested to Mr. Victor that he could if he wanted to, that he could call Mr. Griffiths but that Cary Wilber was in the room and that he could talk with him, if he preferred.

MR. KNOPF: For the record, Alan Griffiths is the Assistant Executive Director of the Writers Guild.

MR. MENDONSA: Since we have had a portion of an affidavit, a supposed affidavit, an affidavit that is going to be submitted into a hearing, I think I should then read the memorandum with respect to that telephone conversation from Mr. Alan Griffiths. This is a memorandum addressed to the investigatory committee.

MR. MILLER: Mr. Griffiths is here, isn't he?

MR. MENDONSA: Are you going to bring Mr. Victor in to testify as to the one you just read?

MR. SMITH: I think if Mr. Mendonsa is going to read into the record a record of memorandum, that the memorandum ought to be, you know, offered as an exhibit rather than a

portion of it read into the record. I know that we have very loose evidentiary rules here, but --

MR. MENDONSA: Well, I am not asking for anything other than what is being granted to you. You read into the record a part of an affidavit. If you want to present the affidavit, I want to present them now. I don't care --

MR. KNOPF: I would like to hear the memo. I have no objection to it. Please read it.

MR. MENDONSA: It is addressed to Paddy Schweitzer, chairman of entries.

"Dear Paddy: David Victor rang me this morning to announce his intention of violating our strike order and going to work for a struck producer, Universal. He said he was aware that this action was in violation and would subject him to discipline by this Guild. Nevertheless, he felt obliged to adhere to his contract with Universal because of the advice he had received from the Producers Guild, of which he is a member.

"He would commence work today. He said in mitigation that he supported this Guild strike and would not perform any writing duties whatsoever. He was willing to picket, if called upon to do so, and would support the Guild in any other way open to him.

"He told me that he had already explained his intention to Cary Wilber on the telephone this morning. After making a prolonged attempt to induce him to change his mind, I told him that if he did go to work for Universal, disciplinary action would follow. He would also suffer as to reputation.

"And this conversation terminated at 10:30 a.m."

MR. BLANKFORT: What was the date on that, John?

MR. MENDONSA: 4-10-73.

MR. SMITH: Mr. Chairman, Mr. Mendonsa has now read a statement of Mr. Griffiths, which statement, I think, should be supplemented by Griffiths appearing as a witness. He is an assistant executive director, I believe, at the Guild, and I don't see any reason why the respondent should not have an opportunity to cross-examine as to this telephone conversation between Mr. Griffiths and Mr. Victor. I think that it is grossly inappropriate, even though we have gross rules of evidence at an administrative hearing, for someone to make a narrative --

MR. MENDONSA: I would be perfectly willing to bring Mr. Griffiths here to testify whenever it would be convenient, and I will bring him here if he will testify to what Mr. Miller has just said in his affidavit.

MR. LAVERY: Mr. Chairman, that is my point. We do have some rules of evidence here. Mr. Miller opened the

door. He read from an affidavit, and we had no chance to cross-examine or examine the person who made the affidavit, and now Mr. Smith challenges our resident counsel for not presenting vis-a-vis any evidence.

Well, Mr. Miller read without opposition.

MR. MILLER: I did not mean to open any Pandora's box. I merely was in support of what the Guild's own witnesses testified to in support of Mr. Victor's willingness to support the Guild and its strike as a member of the Guild, and then they went on to say that he didn't indicate that he was, however, subject to Producers Guild strike to perform as a producer, so it was merely in support of the fact that -- along the lines that Mendonsa was exploring after the Guild's own witness had testified as to the substance of that.

MR. SMITH: Mr. Chairman, I think that this Committee -- we are talking now about letters that were sent to the Committee. I think that this Committee should disregard narrative statements made by potential witnesses wherein such narrative states that he purported to state something did or did not happen. Whether it was offered by Mr. Miller or Mr. Mendonsa, if either side wishes to call witnesses so that the Committee can listen to what the witnesses say and assess their credibility and decide whether or not this witness is worthy of belief.

But I don't think a narrative statement made either by Mr. Griffiths in a memorandum or by Mr. Griffiths in an affidavit or anything else ought to be considered by

this Committee one way or the other. I think that would be the most appropriate way for this Committee to conduct this hearing.

MR. LAVERY: I'm sorry, Mr. Chairman. I am not impressed by the differentiation as it stands on the record right now. There has been one procedure with relation to Mr. Miller's quotation, and you propose another one. Why didn't you raise that about your associate counsel when he was reading?

MR. SMITH: I am suggesting, sir, to the Committee that both are disregarded, since in neither case is a live witness here who is appearing, giving the testimony under oath.

MR. KNOPF: I think we can move ahead.

MR. MENDONSA: I have no further questions of this witness.

MR. LAVERY: The record will show that the action was noted.

MR. KNOPF: It has been suggested that he disregard it. I don't feel any great impact from it myself.

MR. POE: It is the same thing that the other witness stated. He announced that he would violate the line. It is the same thing that he made to Mr. Wilber.

I have no questions of Mr. Wilber.

MR. KNOPF: Thanks very much.

MR. MENDONSA: We will call our next witness, Sy Salkowitz.

SY SALKOWITZ,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Mr. Salkowitz, would you please state your name.

A Sy Salkowitz. S-y S-a-l-k-o-w-i-t-z.

Q Mr. Salkowitz, are you a member of the Writers Guild of America, West, Inc.?

A Yes, I am.

Q And approximately how long have you been a member of the Guild?

A Since 1956.

Q Now, as a member of the Guild, have you had occasion since March 1973 to perform picket duty for the Guild?

A Yes, I was asked to join a special picket duty the morning of April 16th outside of Universal Studios.

Q And did you so appear at that time?

A I did appear at that time. I believe from 7:00 in the morning to about half past 9:00. I was on picket duty at the main entrance of the Studios.

Q And at that time, did you have occasion to observe Mr. Victor, David Victor?

MR. SMITH: Excuse me, Mr. Chairman. Here I will object to any inquiry that is addressed to events which

took place on April 16th, 1973, if my notes are correct, because the charges or at least the purported charges, the documents which this Committee has held to be adequate as charges, were sent by Mr. Mendonsa to Mr. Victor in a cover letter dated April 14th, 1973, two days before April 16th. Therefore, anything whatever that might have happened on April 16th couldn't have been included in those charges which were sent to Mr. Victor two days earlier.

I therefore submit that the testimony on any event that occurred after April 14th, 1973 could not have been included within these charges, and I would submit any evidence or purported evidence relating to such events do not be considered by this Committee as patently not included within the purported charges.

MR. MENDONSA: I recognize that this testimony would elicit information of events which occurred after the service of the charges. I offer it only to whatever extent it would support the fact that Mr. Victor was in fact crossing the line.

MR. KNOPF: The charges state "during the month of April, 1973." I respect your point, but I am going to ask that the testimony continue.

MR. MILLER: Mr. Chairman, may I raise a point there? In asking to reconsider and consult with your counsel the vagueness of the charges. It is true that it covers the month of April, but by letter dated April 14th you could not possibly accuse one of activities which postdate the April 14th letter, and here, Mr. Chairman, all the specificity

of charges that Landrum-Griffin and your Constitution requires if you recall that this testimony is acceptable, you wish to throw all that out the window again. For us to come in and, as you know we are counsel for a number of these people, be prepared not only to defend charges which are specifically alleged in your complaint and your notice of hearing, but then to try to be prepared and to argue what lies ahead, what lies beyond April 14th, flies right in the face of any and every concept of due process, Mr. Chairman.

MR. KNOPF: My Committee informs me that you are quite right, and we accept your objection.

MR. MILLER: Thank you, Mr. Chairman.

MR. MENDONSA: I have no further questions of this witness, and the Guild will rest.

(The witness was excused.)

MR. SMITH: Mr. Chairman and members of the Committee, the Guild having rested, I would now on the case presented by the Guild, which is now closed, very respectfully move to dismiss the proceeding, because the case presented by the Guild, now concluded, not only has not established that Mr. Victor rendered writing services, but on the contrary all the testimony is to the effect that Mr. Victor did not render writing services, if we accept the statements made by Mr. Victor over the telephone as evidence here, and I think we can clearly say, under the liberal rules of the proceeding of this type, that Mr. Victor stated to each of the persons to whom he spoke that he is not doing writing services. My notes reflect that he said he assured

Mr. Wilber he was not doing any writing. You agreed, Miss Anderson. He was not doing any writing, and on the contrary specifically stated that he was performing production or pre-production services in connection with a motion picture.

So what do we have in the case presented by the Guild? We have a case which affirmatively establishes that Mr. Victor was present at the Universal Studios for the purpose of performing production services. We have a case which establishes on the Writers Guild case that Mr. Victor was not performing writing services, and here, gentlemen, I would again incorporate all the arguments that were made in support of the various motions on the various times in the course of these arguments upon which the members of the Committee commented from time to time.

I would like to hear the case. I would like to see what Mr. Victor did do. Well now, gentlemen, we know what it is about. We know it is a case of a producer who was performing production services, who was not performing writing services, and I would submit for this Committee to attempt to impose discipline on this member, for this Guild to attempt to impose any sanctions for a producer performing producing services would be unlawful, would be contrary to the National Labor Relations Act.

As you know, the law exists. I would submit, gentlemen, that the case of the Guild establishes that the matter should be and must be dismissed without even proceeding to the respondent's case.

MR. SUSMAN: I would like to have a word or two. I would like to point out there is no evidence that there was any picket line at Universal and that there was no evidence that Mr. Victor crossed any picket line. All you have is some statements in a conversation that isn't supposed to be at the studio.

MR. LAVERY: Gentlemen, on the current motion the Committee would like to take the matter under advisement.

MR. MENDONSA: Well, may I respond? I seriously contend that there is not any question in the minds of this Trial Committee that there was in fact a picket line at Universal at the beginning of the strike on March 6, 1973. I didn't feel that it was necessary to present that, but so be it.

At any rate, the charge is not that this man crossed the line or went to Universal to render services in a writing capacity. It is a charge that he went in to render services in any capacity. That is the strike order, and that is the effect of this charge. He is in violation of the strike order by going in and writing or doing any other function. As long as he is a member of this Guild, he has violated that rule by rendering any services to Universal Studios.

MR. SMITH: I would simply make this point. It is the obligation of counsel for the Guild to establish every element of his case by proper proof that this Committee can take into consideration. Now, there has been no proof that there was a picket line at any time that Mr. Victor got

into the Universal Studios. I don't know how he got in or what time of day he got in, morning, noon, or night. We have a telephone conversation stating that he was in the studio. Let's assume that that was correct, and he was in the studio. The Guild has not established that, as charged in the charge, Mr. Victor crossed the Universal picket line at Universal Studios, and I respectfully submit that we cannot assume that fact. We cannot assume it one way or the other. We have to have competent proof to that effect even on the face of the charge. This is a rather peripheral point simply because we don't even have it established on the record that he was performing writing services and indeed have not established that he wasn't, but for this additional reason, I would submit that there is simply no basis for continuing with this proceeding and forcing Mr. Victor to go forward with a response to this case.

MR. KNOPF: I would like to ask a question of Cary Wilber, if I may.

Would you tell us what you know about the picket lines at Universal Studios, when they were and where they were?

MR. WILBER: Yes. There was a legal picket line of at least two pickets covering every entrance into the main Universal lot, as well as a picket line of at least two pickets established on the annex across the street. That is at the motel that has been used as offices. This picket line was maintained, I believe, from 6:00 a.m. at that time until 6:00 o'clock at night.

MR. SMITH: Mr. Wilber, do you know as a fact that every single day during April there was a picket there from 6:00 a.m.? Do you know that as a fact, sir?

MR. WILBER: They were not on duty on weekends. As a matter of fact, I do know, because as co-chairman of the Strike Services Committee, I made it my point to tour every line early in the morning before I reported to strike headquarters.

MR. SMITH: Do you know as a matter of fact of direct personal knowledge that there was a picket line at Universal at 6:00 o'clock on every morning, Monday through Friday, as a matter of direct personal knowledge?

MR. WILBER: Yes.

MR. SMITH: Were you out there at 6:00 in the morning?

MR. WILBER: Yes.

MR. SMITH: At Universal, sir?

MR. WILBER: At Universal, and all the studios in the Valley.

MR. SMITH: Did you hit Universal first?

MR. WILBER: I hit Cinema Center. Then Universal, Burbank, Disney, and then swung over to hit Paramount, Goldwyn, and Twentieth Century Fox.

MR. SMITH: What time did you hit Universal in the morning?

MR. WILBER: I would say approximately about the time it took me to run from Cinema Center to Universal, about 6:15 in the morning.

MR. SMITH: Did you miss a single morning?

MR. WILBER: No. I made it a point to be on that line every morning.

MR. SMITH: What about rainy days, Mr. Wilber?

MR. WILBER: No. Rainy days I was also there, wearing an Australian hat.

MR. SMITH: On rainy days the pickets didn't always show up?

MR. WILBER: On rainy days the pickets were there in strength, including the first day of the strike, which was an extremely rainy day.

MR. MILLER: Mr. Wilber, isn't it a fact that on the first day of the strike, when it was a rainy day, the pickets of Universal dispersed and were not present from approximately 9:00 o'clock in the morning till noon?

MR. WILBER: I believe that is correct. I told them to get under cover during the heavy downfall.

MR. MILLER: During other rainy days, didn't they follow a similar pattern?

MR. WILBER: No.

MR. MONASTER: May I ask a question. Mr. Wilber has testified that he was at Universal every day somewhere about 6:15. During the rainy periods, they were there in strength. They may have dispersed, and your questioning seems to be probing for a moment in which there wasn't a picket at Universal.

Is this with the intention of proving that that was when Mr. Victor entered?

MR. MILLER: No. It is with the intention of pointing

out that the Guild, to this point, has not established by testimonial evidence that Mr. Victor crossed a picket line. For example, we have not a witness who testified that he saw Victor cross the picket line. We simply have a dearth of proof by evidence for evidentiary fact, of which this Committee can take account, that Mr. Victor crossed a picket line.

The presentation by counsel for the Writers Guild has attempted to establish by inference and indirection from the fact that Mr. Victor allegedly telephoned from inside Universal, that it follows inferentially that he crossed a picket line.

I would respectfully submit that that is not confident proof on which this Committee can draw the conclusion that Mr. Victor could have crossed the picket line one way or the other. That is the point we are speculating.

MR. POE: Is Mr. Victor's own testimony that he crossed the picket line admissible?

MR. SMITH: It would be admissible. My recollection of the testimony was that he didn't say he crossed the picket line but merely said he was at Universal doing pre-production work on a motion picture.

MR. POE: Did he make the statement that he had crossed the line and that he intended to do so?

MR. WILBER: I am trying to refresh my recollection of the entire conversation with Mr. Victor. I can only say in that regard that there is no way possible for Mr. Victor to cross into Universal without crossing the picket line. Since

he had been out of town until a day or so preceding April 10th -- in fact all through the first part of the strike, we had been trying to contact him for picket duty and that the picket lines were maintained during the period when Mr. Victor said that he was going to work at Universal.

MR. SMITH: I would respectfully submit, gentlemen, that obviously it would be "possible" for Mr. Victor to have gotten inside Universal without crossing a picket line, because it was possible he came before 6:00 a.m. and after 6:00 p.m. However improbable that may be, the only point I am attempting to make to you, gentlemen, is that there hasn't been any probative evidence that Mr. Victor crossed a picket line. There is simply just inference. There is simply speculation. It is theoretically possible that he did or he did not, and we don't know that this is the case.

Mr. Victor has no case to respond to or that he need respond to, simply because it hasn't been established that he crossed the picket line.

MR. LAVERY: I would respectfully submit that we are really getting down to trivia now, if we are going to discuss inference as to what was really an obvious fact. Shall I remind counsel of that classic case in law school days, going back to common law, where a lady and a gentleman were caught in a bedroom, a hotel room at an inn. It was argued at the trial that the evidence was not probative, and the judge said, "We will presume that they did not go up there to say a pater noster."

I think at this point we will presume Mr. Victor

did not land by helicopter at Universal.

Mr. Chairman, I think we ought to take the point under private advisement. If there are no more witnesses at this time, it is my purely individual suggestion, subject to conference, that in justice to counsel we might take his last point under advisement and try to reach a decision on that along with other things sometime tomorrow.

MR. MENDONSA: May I make a comment. We are working on a motion here, and I don't know whether or not depending upon your ruling on that motion, Mr. Smith may in fact have other witnesses.

MR. SUSMAN: Yes. We have some witnesses.

MR. SMITH: Yes. Depending upon --

MR. SUSMAN: But that doesn't derogate from Mr. Lavery's point.

MR. MENDONSA: I would urge that we certainly take it under advisement but that we proceed on this case tonight. I urge that we get it out, all of it.

MR. KNOPF: You are merely building a case of whether or not Mr. Victor crossed a picket line?

MR. SMITH: No, Mr. Chairman. Permit me to make this point, because I think it is quite important. The Guild has the affirmative burden of establishing its case. It has an affirmative burden of showing that the allegation charged be established by competent evidence. It is not our position at this point to break down that case by defense. We are not there yet. We are just looking at the Writers Guild case, and all I am asserting is that taking the Writers

Guild case on its own face, we have the two major points for the Committee.

The first point is, there simply has been no probative evidence from which it has been shown, except by wild speculation and inference, that Mr. Victor may have "crossed the picket line".

Point number two, we have affirmative evidence in the Writers Guild's case that inside Universal, if we accept their case now, inside Universal Mr. Victor was doing no writing services. He assured Mr. Wilber he was doing no writing services and stated that he was doing only production work. That is the Writers Guild's case, and I respectfully submit to the Committee that that is no ground on which this Committee can impose discipline on Mr. Victor.

Now, addressing myself to their case and to their affirmative burden to present a case, I say that the proceeding should be dismissed at this point.

MR. KNOPF: I am going to ask to speak privately to the Committee.

MR. MENDONSA: Mr. Smith's motion is to dismiss this case entirely. If in fact you find doubt in your mind that Mr. Victor did not in fact cross a picket line, although he said he was going to work and did work for Universal, and the picket line was established between 6:00 a.m. and 6:00 p.m., nonetheless the Guild has shown a violation in that this man has rendered services, although not in a writing capacity, to Universal, which company was in fact a company being struck against by the Guild at the time that

those services were rendered.

The strike order included Universal City Studios. It is sort of a statute. There was a strike order in existence at 12:01 a.m. midnight on March 6, 1973, and it is still in effect that no person shall render services in any capacity to Universal City Studios. That certainly has been proven here beyond a doubt.

MR. LAVERY: Mr. Chairman, I think I can hasten to clarify it perhaps. Just one question to Mr. Smith.

In effect, if we were in a court of law downtown, your motions would be for nonsuit at this time. Isn't that really what it is?

MR. SMITH: Under current practice, you are correct, if it were a jury case.

MR. LAVERY: It would be a motion for --

MR. SMITH: It would be a motion for dismissal for judgment at the end of the plaintiff's case, because the plaintiff has failed to prove, to establish a prima facie case.

MR. POE: Can Mr. Victor be tried twice for the charge of crossing the picket line?

MR. MENDONSA: Do you want an opinion? As far as this Guild is concerned, any violations that occurred after these charges certainly are subject to further charges.

MR. MILLER: Take a look at Section 8 of the Constitution. In Article 10, where it says:

"The Board may adopt the findings and recommendations of the Trial Committee

or may reject them. If the Committee or the Board shall find or hold the member charged innocent, he may not be retried, although the findings of the Committee with respect thereto are rejected."

MR. MENDONSA: Well, that is certainly on the same charges we are talking about. I have different charges. I said if there are any charges that are brought with respect to Mr. Victor's crossing the line after April 14 of 1973. Those are new charges. The Committee would not have ruled on those charges, and therefore the Board would not have ruled on those charges.

MR. LAVERY: Well, shall we adjourn for just a few minutes.

(Brief recess.)

MR. KNOPF: We are back in session.

We have given your motion to dismiss on the ground of lack of evidence careful consideration, and we deny it.

MR. SMITH: Mr. Susman will present the witness for Mr. Victor.

MR. SUSMAN: Before you get to that, I would like to have introduced as Trial Committee's Exhibit the Constitution and By-Laws of the Guild, and also the current Strike Rules, as they are amended recently in May, but they should be part of the record.

MR. KNOPF: Are you submitting these as exhibits?

MR. SUSMAN: Yes.

(Brief recess.)

MR. SUSMAN: Reporter, I have a witness down here. Do you want him across from you?

THE REPORTER: I would prefer it, please.

ARNOLD SHANE,

called as a witness on behalf of the respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q Will you state your name for the record, please.

A Arnold Shane, S-h-a-n-e.

Q And where are you employed?

A Universal Studios.

Q Do you work very closely with Mr. Victor?

A Quite a bit. I know him in business affairs in a section of Universal Television. I have much contact with David Victor.

Q How many years had he been at the studio?

A Six years.

Q And you have been there during most of that period?

A I'm sorry.

Q Have you been there during most of that period, the six-year period that he has been at the studio?

A Oh, yes.

MR. SUSMAN: Yes.

MR. MENDONSA: I have no objection.

MR. SUSMAN: Will you supply the copies?

MR. MENDONSA: Yes, I will have to get the copies.

MR. SUSMAN: I would also like a copy of the rules in effect on April 10, 1973.

MR. MENDONSA: The Strike Rules?

MR. SUSMAN: Yes.

MR. MENDONSA: Are you requesting a copy of the Constitution and Strike Rules for your own self, in addition to copies? Will they be needed to be presented?

MR. SUSMAN: No. Just to the panel. I have a copy for my own individual use, but it should be marked as an exhibit.

MR. KNOPF: Copy of the Strike Rules would be Exhibit 5. You are submitting them jointly?

MR. SUSMAN: 5A and 5B.

MR. KNOPF: 5A is what?

MR. SUSMAN: Those that were in effect on April 10th.

MR. MENDONSA: Well, you are talking about the Strike Rules now?

MR. SUSMAN: If there was any difference between the two, and also a copy of the Constitution and By-Laws.

MR. MENDONSA: I will have to get them. You also requested something else?

MR. SUSMAN: That is all.

MR. MENDONSA: Two exhibits, possibly three; is that right?

Q Is Mr. Victor the president of Groverton Productions?

A Yes, he is.

Q A California corporation engaged in motion picture and television production?

A Yes.

Q And have most of his arrangements been worked out through that corporation?

A All of his arrangements with Universal are through Groverton Productions.

Q Is Mr. Victor engaged in production activities at the studio?

A Yes.

Q Had he done any writing for a period of years?

A He has not.

Q What are the series on which he has either been the producer or the executive producer at the studio during the past several years?

A He has been the executive producer of MARCUS WELBY, and he has just commenced services as executive producer of GRIFF, G-R-I-F-F.

Q Has he also been the executive producer on several Movies of the Week?

A Yes, he has.

Q And special projects such as the recent special on POPE JOHN starring Raymond Burr?

A Yes. He has done two specials for us.

Q And in each of those various projects and series,

has he acted as producer, executive producer, or in some production capacity other than writer?

A Yes, he has.

Q And he has not rendered any writing services during that period of time, has he?

A During the six years?

Q Yes. We'll say within the past several years, just to bring it up to date.

A The last thing that he did write on was a story outline for the OWEN MARSHALL pilot. That was approximately at least three years ago.

Q Very well. In his capacity as producer or executive producer, does he hire producers and associate producers?

A Yes, he does.

Q Does he also do the casting or at least pass on the major roles in the project with which he is associated?

A Oh, yes. He is very involved in the casting of any of the continuing players in the series and in almost all the casting in any of the Movies of the Week or specials.

Q Does he also have the responsibility for ultimate approval of the hiring or discharging of writers?

A Yes, he does.

Q Are you aware that Mr. Victor has been a member of the Producers Guild and officer and member of the Board of Directors of that Guild?

A Yes. I am aware of that.

Q Was Mr. Victor away from the period beginning

March 6, 1973 up until April 9th or 10th, 1973?

A Yes, he was, until April 9, 1973.

Q Was he on vacation?

A Yes.

Q Out of the city?

A Yes, he was most of that time. He was on vacation the whole time.

Q And you have been going to and from the studio during the month of April 1973?

A Yes, I have been.

Q And also during March of 1973?

A Yes.

Q I know that you can't specify this with regard to April 10th, 1973 because of no recollection, but have there been times during that period when pickets have not been stationed at all of the main entrances to the studio?

A Yes. I have noticed at least three occasions when there were no pickets during a business day.

Q Do you have any independent knowledge as to whether Mr. Victor crossed the picket line on April 10th, 1973?

A I have no knowledge at all of that.

Q You didn't see him come in or go out?

A I did not.

MR. BLANKFORT: May I ask a question at this point? Will it disturb you?

You were at work on that day?

THE WITNESS: Yes, I was.

MR. BLANKFORT: Did you go through a picket line?

THE WITNESS: On April 10th? I frankly can't specifically recall whether there was a picket line when I came in that day. There were a few occasions, as I have previously stated, on which the pickets were not there.

MR. MONASTER: May I ask a question?

I have been curious all my life. Why does April the 10th stick out in your mind? What happened that day, so it is ingrained?

MR. SUSMAN: Maybe I can answer it. That is the only date on which any charges have been lodged against Mr. Victor. That was the date of the conversation.

MR. KNOPF: Forgive me. I don't think the question was asked of you.

MR. SUSMAN: Well, he asked why April the 10th.

MR. KNOPF: Well, he asked the witness the question.

THE WITNESS: Well, I think my answer indicates that I have no specific recollection of whether there was a picket line that day.

MR. MONASTER: But I want to know why April 10th sticks out in your mind, so that you would testify to events of that day.

MR. SUSMAN: I asked him the question on that day.

THE WITNESS: Your question is very confusing to me, because I don't know what it is that I am saying. I specifically testified to --

Q BY MR. MONASTER: Well, how do you identify April 10th, so that you are able to answer questions about

that day?

THE WITNESS: I think I was at work that day.

MR. MONASTER: You were at work every day, weren't you?

THE WITNESS: Yes, I was.

MR. MONASTER: I was just curious about the memory of witnesses when they are asked about where they were on March 6th.

What date is it today?

THE WITNESS: Today is May the 21st.

MR. MONASTER: Looking at my watch, yes.

MR. LAVERY: May I ask a question.

I hope this isn't an iffy question, but sometimes we have been allowing iffy questions. I want to know whether or not on a given day there was a picket line at each and every entrance of Universal. You, as an important officer in charge of personnel business affairs were aware that a strike was in effect at that studio?

THE WITNESS: Yes, I was.

MR. LAVERY: That is, the existence of a strike, even that a metaphysical strike line exists, even independent of whether there was a picket line there or not, whether at a given hour somebody is having lunch or whatnot, the strike action -- The point I am making is whether on a given day and a given hour, there was a picket plan on the gate? People on the inside knew a strike was in progress?

THE WITNESS: Yes, they did know there was a strike in progress. I won't make any comment about the metaphysical line.

MR. LAVERY: All right.

MR. SUSMAN: That is all the questions I have.

EXAMINATION

BY MR. MENDONSA:

Q How often do you come into contact with Mr. Victor in the normal course, say, of a business week?

A It varies. It can be anywhere from perhaps once to ten times in a week.

Q Would you ever enter the studio with him?

A No.

Q Would you leave with him?

A No.

Q So you don't know for sure whether or not he did or did not cross a picket line going in or going out of the studio?

A I do not know.

Q Do you know what his normal business hours were at the studio?

A Well, I have seen him at the studio on many occasions as early as 9:15 or 9:30, which is the time I get in. I don't know whether he got there before I did or not, and he very often does not leave until after 6:00 o'clock. I have had many meetings with him that went beyond 6:00 o'clock.

Q But aside from the unusual circumstances, generally would he be there earlier than 6:00 a.m.?

A I have no way to answer that question.

Q Would it be unusual in general circumstances for anyone to be there before 6:00 a.m. in his capacity, in an executive producer capacity?

A In an executive producer capacity?

Q Yes, on a normal basis.

A I would think so.

Q In the general scheme of events, would it be unusual for a man in his capacity to leave every night after 6:00 p.m.?

A I would say in all likelihood, the executive producers leave after 6:00 o'clock, yes.

Q What time do you normally leave?

A 7:00.

Q And you would only get there around 9:15?

A 9:15 to 9:30.

Q And during that period of time, there have been only three occasions when you have not noticed a picket line at Universal?

A I can answer the converse. There are three occasions that I specifically recall that there was not a picket line. I am not noticing picket lines from moment to moment, so I think your question is a little bit confusing to me.

Q Well, let me sort of clarify.

Would you say that more often than not you crossed a picket line to go into the studios from the date of March 6th up to the present?

A Certainly not the last two weeks.

Q Well, aside from the last two weeks?

A Most of the time there was a picket line, yes, at the time I came in.

Q Now, you testified that the writing that you know of or that you were aware of done by Mr. Victor was a pilot for OWEN MARSHALL; is that correct?

A A pilot story, and I believe, format for a series.

Q Did he get a created-by credit on that series?

A A joint created-by credit with another member of the Guild.

Q Do you know about when that was when that writing was done?

A At least three years ago.

Q Could it have been in June of 1971?

A Let me see. OWEN MARSHALL went on the air in '71 -- '72 -- no, it would have to be a year prior to that. It would have to have been in 1970. The pilot would have been made in the late fall or early winter of '70-'71.

Q Are you familiar with the Movie of the Week done for Universal Television entitled THE BRAVOS?

A Yes.

Q Did Mr. Victor do any writing on that Movie of the Week?

A He wrote a story and format much prior to OWEN MARSHALL that was originally conceived at MGM.

Q And did he get a credit on that, to your knowledge?

A I don't remember whether he had any screen credit on that pilot or not. The pilot was perhaps three years ago.

Q Has Mr. Victor worked on the series at Universal known as MARCUS WELBY?

A Yes.

Q Has he done any writing on that series?

A Not to my knowledge since the pilot.

Q Is it possible that he could have done writing in 1973 on that series?

A I have seen no work of his in a writing capacity. Now, all writing materials written for Universal Television crosses my desk.

Q And in 1972, you observed no writing that he had done on MARCUS WELBY, M.D.?

A That's correct. I have no recollection of seeing any material with his name on it. He does have a created-by credit on the series by virtue of his writing the format.

Q Well, to your knowledge, do you know if Universal paid him any money for writing services on MARCUS WELBY, M.D. in 1972?

A I know of no such payments.

Q How about 1971? Was he paid any writing services for writing services on MARCUS WELBY in 1971 by Universal?

A I don't believe so.

MR. MENDONSA: I have no further questions.

MR. BLANKFORT: Mr. Shane?

THE WITNESS: Yes.

MR. BLANKFORT: I heard earlier that Mr. Victor said he was in the studio during pre-production. Could you tell us something about pre-production work? What does it entail?

What would Mr. Victor be doing?

THE WITNESS: It entails the working on budget of a picture. The selection of locations, discussions of casting of the picture, discussions of selection of the director. In some cases it might involve -- in the case of an executive producer it might involve the supervision of a writer.

MR. BLANKFORT: You say if it entailed casting, that would mean interviewing actors?

THE WITNESS: Sometimes, depending on the status of a particular picture.

MR. BLANKFORT: And would that also on occasion include readings from actors?

THE WITNESS: It might, if the picture is that close to going ahead. It is more customary to have a director before that happens.

MR. BLANKFORT: Well, whether there is a director present or not and there is a reading by actors, is it possible that there may be some discussion about the actor and director with the producer or with the executive producer in a pre-production period about the meaning of the part or of the relationship of the part or what the part is, whether it is strong or weak or well-written or not?

THE WITNESS: Yes. That is very possible. It is a common thing in pre-production.

MR. BLANKFORT: And are there not some notes taken by the executive producer about revisions of the scripts or ideas that have come up in the discussion with the actor or director?

THE WITNESS: That is possible.

MR. BLANKFORT: So my next question, of course, is apparent.

It might be that the executive producer actually wrote or rewrote? I am not saying in this case that Mr. Victor did at this time, but generally speaking in pre-production, is it not possible that the executive producer might be rewriting a speech or rewriting a line of the development of a script?

THE WITNESS: It is possible, but I know that Mr. Victor generally doesn't work that way.

MR. BLANKFORT: So it generally is part of pre-production, but Mr. Victor doesn't engage himself in an examination of story with the director in pre-production?

THE WITNESS: No. That is not what I meant at all. What I meant was that Mr. Victor generally does not do the rewriting on his scripts. He develops through story conferences with writers.

MR. BLANKFORT: So do you think that reconstructing a story line -- if I said to you that of a writer, I would feel that working on a plot or a structure of a story and writing it is the same as doing dialogue. Would you accept that definition?

THE WITNESS: Not necessarily. I feel that part of a producer's function comes within the exceptions of Sections A through H of the Writers Guild agreement. I don't recall which specific article it is.

MR. BLANKFORT: Mr. Mendonsa, has Mr. Victor paid dues

to the Guild in the last three years?

MR. MENDONSA: I will offer either now or sometime at a later point the records of Mr. Victor's employment as a writer since the time he became a member of this Guild, including all the dues he has paid to the Guild up to date. Those records will indicate that he is paid up to date. He is a current member of this Guild. I will also offer --

MR. BLANKFORT: What do you mean by a current member? What category?

MR. MENDONSA: A current category.

MR. BLANKFORT: How do you define that?

MR. MENDONSA: He is what has been considered an active member.

MR. KNOPF: With voting privileges?

MR. MENDONSA: He has full voting rights in this Guild.

MR. KNOPF: For the benefit of the group, would you read the requirements for being a voting member?

MR. MENDONSA: Well, the membership provisions of the Constitution are included in Article 4, which states in Section 1:

> "There shall be four classes of membership in this Guild, which classes shall be denominated associate, current, non-current, and withdrawn."

Eligibility for current status is stated in Section 3 of Article 4, and it states as follows:

> "The unit credit system hereafter set forth is designed to measure as

accurately and fairly as possible the nature and kind of writing done. It shall be the duty of the Board of Directors to review the system and the designated units of credit from time to time, and when in the judgment of the Board of Directors changes occur in the industry or otherwise which warrant consideration by the membership, the Board of Directors shall place before the membership appropriate recommendations. Any person shall attain current status in the Guild, if during the preceding two years he has accumulated an aggregate of 12 units of credit as hereafter set forth, which units are based upon work completed under contract of employment or upon the sale or licensing of previously unpublished and unproduced literary or dramatic material provided, however, said employment, sale or licensing is within the jurisdiction of the Guild as provided in its collective bargaining contracts."

Then it goes on to sort out the various kinds of employment that are required in order to obtain certain units of credit. An example would be a person who would

receive one unit of credit.

"If a person is employed within the Guild's jurisdiction on a week-to-week or term basis he shall be entitled to one unit of credit for each complete week of such employment."

Then units of credit may also be obtained in accordance with the following schedule. As an example, he would have received one unit for an episode in a series for which a writer receives a created-by credit. This goes on on a whole schedule of credits. He would receive ten credits, for example, for one hour of teleplay or story and radio play.

The current status of a member will continue, and that is stated in Section 4 of Article 4, and it reads as follows:

"Any current member shall become a non-current member if, during any three consecutive years, he does not earn at least six units of credit. A non-current member shall be reinstated to current status if during any three consecutive years as a non-current member, he earns six units of credit. As of the date of adoption of this -- "

MR. BLANKFORT: For myself, at any rate, I don't feel it is necessary for you to go on. I wanted to know what a current member was in relation to Mr. Victor's work as

a writer. If by your definition he is a current member, that means he is a current writer, and he has achieved a number of credit units to have that status.

MR. MENDONSA: He has the highest status in the Guild. He is currently in the highest classification of this Guild.

MR. BLANKFORT: Mr. Shane, you tell me that as part of pre-production that Mr. Victor discussed scripts with writers currently. As far as you know, has he worked with writers?

THE WITNESS: I know that he has not.

MR. BLANKFORT: Then I understand you to say that in this period of pre-production, he may be discussing the script with a director or production manager, but he has not discussed it at all with any other writer?

THE WITNESS: Yes, that's correct.

MR. POE: Mr. Shane, to the best of your knowledge, during April was Mr. Victor planning or in the process of creating a new series or a Movie of the Week?

THE WITNESS: He is not planning any new series. His present concern is the production of the three series that he is assigned to for this upcoming season.

MR. POE: And he has a stockpile of scripts, I assume?

THE WITNESS: In some cases there are some scripts, yes.

MR. POE: But he is not making any revisions in these scripts?

THE WITNESS: He personally?

MR. POE: Yes.

THE WITNESS: He is not.

MR. POE: By revisions I mean cuts for purposes of budget or casting or location or for purposes of production.

THE WITNESS: No, I don't believe he is doing that. That is done more by the line producer and not by the executive producer.

MR. KNOPF: Who was the line producer on this particular project?

THE WITNESS: Mr. Epstein. I'm sorry. You say this particular project?

MR. KNOPF: Yes.

THE WITNESS: I didn't understand the question.

MR. KNOPF: I'm sorry. I understand that Mr. Victor is in pre-production or was in pre-production at the time on some projects.

THE WITNESS: No. He is doing some pre-production on a feature picture that is not yet scheduled.

MR. KNOPF: A feature for television or for motion pictures?

THE WITNESS: Television.

MR. KNOPF: This is the project that someone referred to as a pre-production.

That is the production that we are talking about, right?

THE WITNESS: Yes, it is. The pre-production is in connection with a theatrical picture that he has been working on for about a year.

MR. KNOPF: And who is the producer of that?

THE WITNESS: I believe it is Bill Link and Dick

Levinson.

MR. KNOPF: Mr. Shane, Mr. Poe or you referred to three pilots that are in preparation.

THE WITNESS: No, three series. Three series.

MR. KNOPF: And Mr. Poe asked you if there had been some stockpiling, and I believe your answer was that he had?

THE WITNESS: I said there are some scripts for some of the shows.

MR. KNOPF: On each of the three pilots?

THE WITNESS: Two of the shows are renewals of ongoing series -- MARCUS WELBY and OWEN MARSHALL. There are some scripts for each of these series. The other is GRIFF, which Mr. Victor will be the executive producer of. I don't believe there are any scripts for that show, but I am not positive.

MR. KNOPF: But as far as the two ongoing shows, there hadn't been a change in that script made since March 6th by anyone?

THE WITNESS: None of them have circulated, nor have there been any writers employed on them.

MR. KNOPF: In other words, whatever the last version was on March 6th, that is the version that you have today with no changes of any kind?

THE WITNESS: To my knowledge, yes.

MR. KNOPF: Are you that familiar with the state of the script? Would you know, for instance, if there was a script rewritten yesterday by anybody, and I am not accusing

anybody. Is it part of your job that you know about it?

THE WITNESS: Usually, yes.

MR. KNOPF: How?

THE WITNESS: The scripts or the changed pages are mimeographed, and I receive copies of them.

MR. MILLER: Mr. Chairman, with all due deference to your procedures here, which have been very fair, I would like a word to note that Mr. Salkowitz, who was going to be a Guild witness, has passed a note to the Chairman.

MR. KNOPF: I will read it.

> "David Victor was 'current status' under the old Constitution -- which required more writing than the present Constitution. Signed Sy."

EXAMINATION

BY MR. MILLER:

Q Mr. Shane, you testified that Mr. Victor was out of town until approximately April 9th from March 6th; is that correct?

A Yes.

Q Mr. Victor was on vacation?

A Yes.

Q During the week of April 9th to the best of your knowledge did Mr. Victor perform any writing services for Universal City Studios?

A He did not.

MR. MILLER: That was my only question.

MR. POE: Since April 10th, you have testified the changed pages cross your desk.

Have any changed pages, from Mr. Victor's unit since April 10th?

THE WITNESS: No.

MR. BLANKFORT: The question I have to ask is, to your knowledge have there been any requests for changes or any consultation with the network representatives that broadcast these series?

THE WITNESS: There have been the customary submissions of story lines to the network for approval, and there have been comments from the network standards of practices people on some of the scripts asking for specific changes which don't comply with broadcast standards.

MR. BLANKFORT: What has happened with the suggestions or these orders by the networks?

THE WITNESS: Which shows are you referring to now? I don't know any of the shows that have already been written were submitted and that have not yet been shot.

EXAMINATION

BY MR. MILLER:

Q Are those shows upon which Mr. Victor is the executive producer?

MR. BLANKFORT: That's right. Those are the only ones that interest me at the moment.

THE WITNESS: I don't believe the changes have been made, yes.

MR. BLANKFORT: But he has received comments from the networks?

THE WITNESS: Yes.

MR. POE: Has he spoken to the networks about these changes or discussed them?

THE WITNESS: I don't know.

MR. KNOPF: Referring to OWEN MARSHALL and MARCUS WELBY, when are these scheduled to commence production?

THE WITNESS: At the present time they are not specifically scheduled for any particular date.

MR. KNOPF: Neither one has been scheduled?

THE WITNESS: That's right.

MR. KNOPF: Have directors been hired for any of these shows?

THE WITNESS: I don't believe so.

MR. MENDONSA: I want to make sure the record is clear.

Mr. Victor returned from vacation on April 9?

THE WITNESS: Yes.

MR. MENDONSA: And from April 9 through April 14, he was in fact working for you for Universal?

THE WITNESS: Yes, he was.

MR. MENDONSA: And he was reporting for work every day?

THE WITNESS: Monday through Friday, yes.

MR. MENDONSA: Monday through Friday?

THE WITNESS: Just to be technical, Mr. Victor is on a loan-out from the Groverton Productions.

MR. MENDONSA: Where are their offices?

THE WITNESS: The Universal Studios.

MR. MENDONSA: Is Groverton Productions secondary to the NBA?

THE WITNESS: I cannot answer at this time. I don't believe so. I think it operates under the umbrella of Universal when there is an existing NBA.

MR. MENDONSA: I have no further questions.

MR. KNOPF: Any further questions?

Thank you very much, Mr. Shane. Thank you for being so patient, also, and waiting so long.

MR. SMITH: Mr. Chairman, I would like to have an opportunity to examine the record of Mr. Victor's writing credits to which Mr. Mendonsa made reference to in the course of his cross-examination before completing the presentation of the defense.

May I examine that document, please?

MR. MENDONSA: Certainly. I might note for the record that this document along with the records and dues statement was submitted to the counsel prior to the hearing for his inspection and for his stipulation that they could be offered in evidence without foundation having to be laid.

(A discussion was held off the record.)

MR. KNOPF: On the record.

MR. SMITH: At this time, Mr. Chairman and members of the Committee, I would offer in evidence as Respondent's Exhibit next in order a two-page document entitled Writers Credit Record for David Victor which is maintained by the Writers Guild of America, West, this copy of which was produced or handed to me by Mr. Mendonsa presumably came

from the records of the Writers Guild, and I would offer the entire document in evidence, which consists of two cards with writing on three sides of the card.

In particular, gentlemen, I would invite your attention to the last three credits.

MR. KNOPF: Mr. Smith, before you do, can we accept it as entered and then can we have a copy, so we can follow what you are referring to?

MR. MENDONSA: I will not object.

MR. SMITH: Surely. Gentlemen, I would then respectfully invite your attention to the fact that the last three entries at the bottom of card number 3 show that there were credits for Mr. Victor in 1971, January of 1971, February of 1971, and June of 1971. There are no credits for either 1972 or 1973. All credits preceding '71 go back to 1968.

I would also call your attention to the symbols which are explained at the bottom of the page. The first credit for OWEN MARSHALL refers to S for story, meaning that Mr. Victor collaborated in a story which, of course, could have been written at a time much earlier than the date of the credit.

The second credit in February of 1971 also refers to S for story. I notice Mr. Knopf being a collaborator in connection with that story. Again that could have long preceded the actual date of the credit.

Finally, the initials CB for the third credit refers to created by, which, of course, quite obviously

could go back beyond the date of June 1971.

I would also in this connection, gentlemen, call your attention to the definition. It's a rather elaborate definition. I am not going to go through the entire definition of what current status means under the Writers Guild's present Constitution and By-Laws, but summarizing the concepts of this rather elaborate series of criteria for current status, it is quite clear that you lose your current status if during any three consecutive years you do not earn at least six units of credit. There I am referring to Section 4, Duration of Current Status.

In other words, gentlemen, you could have earned six or a hundred credits in 1971, let's say, and do no writing at all in '72 or '73, the next two years, and you would still have current status because there has not been three consecutive years during which you didn't earn the required six credits.

In short, gentlemen, it follows that the fact that someone is in current status, which, as Mr. Mendonsa says, is the highest possible status, could just as well mean that the person having that status has done no writing whatsoever during the last two consecutive years, even if he did do sufficient writing three years ago under the definition of current status.

In short, I think, gentlemen, that the exhibit which has just been received in evidence with the credits dated 1971, were obviously referring to work that had been done prior to that, and the fact that there are no credits

for 1972 and the fact that the current status only means that you had to have earned certain credits at least within the next preceding three years, in no sense refutes or in any way suggests that Mr. Victor was doing writing during the period, the very short period in April 1973, of which is relevant to the charges that is presently before the Committee.

In short, I think that Mr. Shane's testimony stands completely confirmed that in no sense can be refuted by the record that has now been received in evidence as to Mr. Victor's writing credits. By the definition of current status, and I only emphasize that point because apparently members of the Committee in some of their comments were concerned with the fact that Mr. Victor did enjoy the current status as a member of the Guild --

MR. KNOPF: Could I ask you a question. In your mind, Mr. Smith, and clearly you are very close to Mr. Victor, do you feel that he considers himself a writer?

MR. SMITH: No possible way, Mr. Knopf, that I or any counsel could answer the question of what Mr. Victor considers himself. I don't believe the question is one which lends itself to an answer by counsel.

One thing is clear on this record, I submit, Mr. Knopf, and that is that Mr. Victor did not do any writing during the period to which these charges are addressed. The Writers Guild's direct case establishes that by their statements attributed to Mr. Victor and the testimony of Mr. Shane establishes that he did not do

any writing in the only period that is relevant under these charges, the period of April 1973. We have on this record the fact that Mr. Victor was on vacation until the 9th. We have the charges dated the 14th. So we are concerned with a five- or six-day period from April 9th to April 14th, and I submit, gentlemen, that with respect to this five- or six-day period that, number one, the evidence is clear that Mr. Victor didn't do any writing and, number two, the evidence is not clear in any sense that he crossed any picket line, because we still haven't established that he crossed the picket line.

We have Mr. Shane's testimony that he recalls three different occasions when there was no picket line. He doesn't remember when those three occasions were, but we haven't established that Mr. Victor crossed a picket line during that five- or six-day period from April 9th to April 14th, and we certainly have established that he did not do any writing services.

I think that is all that is relevant to the members of this Committee for purposes of this proceeding.

MR. KNOPF: Let me clarify this in my own mind. You have said that. It has been agreed or it has not, that Mr. Victor went to work at Universal during the period of that week in question. I believe Mr. Shane testified to that fact, and you are saying or suggesting at that time during that entire week there were no pickets?

MR. SMITH: No, Mr. Knopf. I am saying that the testimony before this Committee is not conclusive, that

there were pickets during every moment of the business day from the 9th to the 14th. There just is no testimony from which this Committee c. i make that conclusion.

MR. KNOPF: Mr. Shane stated that at approximately three times he noticed no pickets.

MR. SMITH: He didn't specify who those were.

MR. KNOPF: Did he not also specify that Mr. Victor went to work during the five days?

MR. SMITH: He certainly did, sir. We do not know, Mr. Knopf, whether or not Mr. Victor crossed the picket line on the basis of the evidence. There has only been inference.

MR. KNOPF: My question is, it would appear Mr. Shane has said that Mr. Victor entered the premises five days, and there were three days in which Mr. Shane noticed no pickets.

MR. SMITH: And we don't know when, because he doesn't remember. Remember, Mr. Shane made this point, Mr. Knopf, and I clarified this because there was a question, I believe, that raised this ambiguity. He said he remembers three occasions when there were no pickets. That is not to say there weren't other occasions. He just doesn't affirmatively remember those. He happens to remember that there were three occasions that there were no pickets. That is precisely the point that this testimony established, that there were occasions that he happened to have noticed that there were no pickets, so your arithmetical combination of three and five is simply not conclusive one way or the other.

MR. LAVERY: I would like to repeat. The existence of a strike situation at a properly declared studio does not depend from hour to hour or day to day on whether, shall we say, a quorum of pickets, whether it was one or whether it was two or whether on a particular day there happened to be none. Once a strike situation is established that a studio is struck, that struck situation exists whether or not you had a hundred pickets or two pickets or no pickets, and our Guild rules so indicate it.

You know, it seems to me a little medieval now in this reasoning today that the picket wasn't here that day.

MR. SMITH: That is not the charge. The essence of due process, sir, is that you have been advised of what the charge is and given an opportunity to meet that charge. Mr. Victor has been charged with crossing a picket line. I could well agree with you on an esoteric basis that a strike situation exists and that people inside the studio knew that, but Mr. Victor is accused of crossing a picket line, and the Guild has to establish the charge in order for this Committee to have a legal right to impose discipline, and I would submit, sir, that this is not just a ritualistic thing and it is not a Talmudic thing. It is the charge Mr. Victor has been called upon to face. There hasn't been any established picket line, sir.

MR. LAVERY: If a court of competent jurisdiction signs a restraining order, is it only binding when there are deputy sheriffs or court officers out there walking up and

down? I am not now referring to pickets. I am saying that situations exist in which there is a line of restraint and a line of proscribed conduct, whether or not there are always people out there carrying banners. My point is there was a picket line at that studio, irrespective of the number of pickets.

MR. MILLER: Mr. Lavery, may I ask you one thing in connection with that, because we have nothing but the flimsiest conjectures on hearsay. Is there one shred of evidence in this entire record that Mr. Victor ever received a copy of the Strike Rules which he is accused of violating?

Number two, a copy of the Guild's Strike Order which put him on notice that the Guild was on strike. He may have come in after he was out of town, and if there weren't pickets at that particular moment, he may not ever have known. There is not one shred of evidence that he was ever put on notice as to the rules on Strike Orders that he is purported to have violated.

I am saying that he received it during that hearing. There is not one shred of evidence in this hearing that Mr. Victor received a copy of those rules or received a copy of the Strike Order. If he was out of town for a month, and he came in and if there didn't happen to be a picket there, he may never have known that they were on strike until two days later, so that existence of a picket line in this case where there was no evidence that he was ever put on these rules where the Strike Order becomes pertinent.

MR. KNOPF: (Reading) "A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts or telecasts, et cetera, unless he offers satisfactory evidence that it was impossible for him to receive such strike information."

These rules were mailed out long before the calling of the strike.

MR. SMITH: Mr. Knopf, if I may respond to that. I think that this is a disciplinary hearing in which it is sought to have discipline imposed on the member, and that it therefore is the burden of the Guild's counsel to affirmatively establish all the elements of his case with the requirements of due process complied with.

I don't think that you can comply with due process requirements if you are going to charge someone on a rule, as this Guild attempts to do, with constructive knowledge of everything that might have been disseminated in the newspapers for purposes of discipline.

MR. KNOPF: I think, Mr. Smith, that I do.

MR. MENDONSA: May I respond? As Resident Counsel of

the Guild, I think I can make a few representations here. I think that we are again splitting hairs. Every strike order and the Rules of Conduct of Members During a Strike were sent to every member of this Guild. They were sent the strike orders which were sent on February 20 of 1973. The first strike order was sent on March 6th of 1973. Mr. Victor, as a member of this Guild -- and I say this without question -- he was sent a copy of the strike orders and the Rules of Conduct of Members During a Strike.

I might also make the comment for the record here. The respondent --

(Brief recess.)

MR. MENDONSA: I just wanted again to continue. I think that this Committee should make note of the fact that respondent is making a big production here with respect to the Guild's necessity of having to prove its case. This is a disciplinary hearing, and all rules of evidence are not going to be strictly adhered to, but, in any event, I think that the Committee should take note of the fact that Mr. Victor is not here to testify that he did not receive these items, and I suspect very much that it was purposely done, that he not here. We have had one other witness testify that he didn't do any writing. With respect to Mr. Smith's emphasis of this case, it seems to be that this Guild has not proven a case that David Victor crossed the picket line.

I submit that this Guild has presented a case which would certainly raise doubt in your mind that he went

into work without having crossed a picket line. Mr. Shane testified that he on three occasions recalls not seeing a picket line, but that was for a period of nine weeks that he didn't recall seeing a picket line for three times, not five days.

Again, this case is not predicated necessarily or solely predicated on the crossing of a picket line. This case is also predicated on the fact that Mr. Victor rendered services to a struck company in direct violation of the strike order, and that is set forth in the charge. That is what he has done. Even if you should find that there is no proof that he crossed a picket line, which is highly unlikely because we have had testimony there were picket lines on the Universal lot from 6:00 a.m. to 6:00 p.m. every day.

Now, if you are going to believe that this man worked in addition to 12 hours a day, which is possible but unlikely as Mr. Shane pointed out, that anyone in this capacity would have done so, then perhaps you should find that he did not cross a picket line, but I submit to you that the probabilities of that are very unlikely.

As to whether or not he is a writer or not, for some reason or other this Committee is asked not to find a violation in this case simply because a man did not do any writing on April 10 of 1973. Well, his record, I take it, was accepted into evidence, and it indicates that he has had other hiatuses in which he hasn't had any other screen credit. Between 1968 and 1971 he apparently didn't

have any credit. Between 1960 and 1966 apparently he went for a period of time without any writing credits. That doesn't indicate whether or not he is a writer. He had sufficient credits to be determined to be a writer by the Writers Guild of America, West, Inc. This very organization determines who is a writer and who is not a writer.

So I submit to you that this man is a member of the Guild. He is subject to the rules and regulations of this Guild. He has violated these rules and regulations by, one, working for a struck company rendering services to a struck company in violation of the strike order, and, two, by having crossed a picket line to render those services. He has violated the Guild Strike Rules in this.

There has been the point made that on these credits, the credit record does not necessarily reflect the date of employment. I will offer into evidence also the Guild's work record for the man, David Victor, from the time he became a member of this Guild in 1947, or its predecessor, to the present date, and this record will indicate that every quarter he has paid his dues and upon which portion of those dues he paid for the writing services.

Let me offer them into evidence on the record. As is shown on the record, I have shown these two to Mr. Smith before the hearing. He had agreed at that time to allow them into evidence without foundation.

MR. SMITH: Yes. I stipulated on Mr. Mendonsa's representation that these are records kept in the ordinary course of business by the Writers Guild and that no question

as to foundation need be offered for their being offered in evidence.

MR. MENDONSA: With that, I will offer them into evidence.

MR. LAVERY: Mr. Chairman, I don't like to repeat old grounds, but a few minutes ago counsel was suggesting that there was insufficient evidence as to Mr. Victor's actual knowledge that a strike situation existed. Well, there is undisputed evidence that he called the Guild, said he was in sympathy with the strike, and made inquiries about the possibility of picketing. That testimony has not been contradicted.

MR. SMITH: To cut through this, I think that we are now engaged in a colloquy that seems to be in the nature of closing argument, even though it rose in the context of offering into evidence the record of the writing credits by Mr. Victor.

I think for purposes of clarifying the record that I should state that the respondent now rests, insofar as the presentation of his defense is concerned.

Now, upon the completion, Mr. Chairman, of the entire case, I assume you should ask Mr. Mendonsa, "Do you have any rebuttal to offer at this point, the respondent having just rested?"

MR. MENDONSA: Only I would ask for a determination of this as an accepted ruling.

MR. KNOPF: Yes, of course.

MR. MENDONSA: Was the credit record also accepted?

MR. KNOPF: It was accepted. I will assume that the credit record was Exhibit 6 and this would be Exhibit 7, if my numbers are right.

MR. SUSMAN: I believe 6 was the Constitution and By-Laws. One was the Strike Rules and 5A and B was the Strike Rules.

MR. KNOPF: Fair enough. Whatever you wish.

MR. MENDONSA: May the record show that I am offering or submitting a one-page letter to Mr. Smith, and this would be offered as next in order. It is a one-page letter dated August 17, 1970. It is addressed to the Writers Guild of America, West, Inc. and signed by David Victor. I will offer this in evidence, because this is an explanation to the work record here and the entries made on that work record.

MR. KNOPF: What is the date?

MR. MENDONSA: August 17, 1970.

MR. KNOPF: That would be Exhibit 9?

Mr. Smith, may this be accepted as Exhibit 9?

MR. SMITH: No objection.

MR. MENDONSA: Well, only by way of explanation, I would offer the following explanation on the exhibits. On the work record, if you will look at page two, you will note that there are in the second column entries that either stand for residuals with the date stamped and certain entries are entered in writing. These entries show the dues that are paid on each quarter. The last column would indicate the total earnings of that individual and the amount of which dues were paid. You will note on that page

there are three entries for MARCUS WELBY at Universal, one for 1970, one for 1971, and one for 1972.

The last exhibit is an explanation of why those appear only once a year. The letter simply states that Mr. Victor was paid on a delayed basis by Universal in January of each year. It states it is at that time in May that the Writers Guild dues were paid for that year.

Now, dues are only paid for writing services, and you will note that for each of the last three years he has paid to the Guild for writing services on the series of MARCUS WELBY at Universal.

MR. SMITH: I would simply add, gentlemen, to supplement the point precisely that was made by Mr. Mendonsa, which was that the last entry that appears which was received in evidence, he was paid on a delayed basis at the end of the year, which means that that 1972 payment had to refer to work that was done previously or in 1971, so again it is totally inconsistent with your previous record that for the past two years there is no record of the writing that Mr. Victor in fact did any writing.

I think all of the records that have been offered here simply confirm the fact that there was no writing done by Mr. Victor for the past two years.

MR. MENDONSA: If you will note on page four of the work record, the second to the last entry on that page shows "1-71 -- STP" -- which, I believe, is story and teleplay -- "UTV -- World Premiere -- OWEN MARSHALL, COUNSELOR AT LAW".

That date would be the date upon which the service contract was dated. The one below that would be "2-71". That indicates "UTV -- World Premiere -- THE BRAVOS". That would indicate the date of the service contract, unless there is a previous entry -- and I don't believe there is in either one of those.

MR. KNOPF: I am going to with your permission terminate discussion upon the credits and the payments. I think we have exhausted the area about Mr. Victor's writing.

MR. SMITH: All right. Do you have anything further by way of rebuttal, Mr. Mendonsa?

MR. MENDONSA: Nothing.

MR. SMITH: Both sides having rested on defense and on rebuttal, simply in one sentence I would like to formally renew on the record all of the motions that were made by the respondent Victor before testimony was taken. At several times during the course of the presentation of the motion, several members of this Committee made the observation that these motions could better be considered out of all the evidence, if any. I heard that comment made by several persons, and I would like now to formally renew the motions with the same force and effect as they were considered in the first instance.

For all the reasons stated in support of those motions, I now renew them for the record and present for consideration to the Committee the merits of each of the respective motions to dismiss and for continuances, as stated.

MR. MENDONSA: Just for the record, the Guild will make the same responses and objections to the motions.

MR. LAVERY: I move we take it under advisement.

MR. KNOPF: The procedure of the Committee is that we will take it under submission, all that has been said. We will meet in private session. Our rule is that four out of five must find a man guilty. If two find him guilty, he is not guilty. Whatever our findings are, they are taken to the Council. The Council has the right to countermand our findings. If we find a man guilty, and they wish to find him innocent, they can so do. He has a final recourse, which is to go before the full membership and take his case there.

We will meet privately, probably later tonight or tomorrow. I don't know when.

The hearing is closed.

(Whereupon, it was stipulated by and among counsel that Trial Committee Exhibits 5a, 5b, 6, 7 and 8 were to be received in evidence.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, PETER M. RUNKLE, Notary Public for the State of California, certify:

That the foregoing transcript of proceedings was taken before me at the time and place therein set forth and recorded by me stenographically; thereafter, my notes were transcribed into typewriting under my supervision.

In witness whereof, I have subscribed my name and affixed my seal this 14th day of June, 1973.

Peter M. Runkle
Notary Public in and for the
State of California

OFFICIAL SEAL
PETER M. RUNKLE
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Apr. 23, 1977

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
DAVID VICTOR)
)
)

90403

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

August 24, 1973

ORIGINAL

REPORTED BY: Willie B. Brown,
CERTIFICATE NO.: Notary Public

BILL CUFF & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
13817 CALVERT STREET
VAN NUYS, CALIFORNIA 91401
873-7410

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
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WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
DAVID VICTOR)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of Writers Guild at 8955 Beverly Boulevard, Los Angeles, California, commencing at 10:00 A.M., Friday, August 24, 1973, before Willie B. Brown, Notary Public.

BEFORE:

LEIGH VANCE, Chairman
MILLARD KAUFMAN
MARTIN DONOVAN
JACK SHER
BARRY ORINGER

APPEARANCES:

FOR WRITERS GUILD:

MILTON ORMAN, ESQ.
3242 West Eight Street
Suite 223
Los Angeles, California 90005

FOR RESPONDENT DAVID VICTOR

LOEB AND LOEB
BY: ROBERT A. HOLTZMAN, ESQ.
One Wilshire Building
Wilshire Boulevard at Grand Avenue
Los Angeles, California

ROSENFELD, MEYER & SUSMAN
BY: ALLEN E. SUSMAN, ESQ.
9601 Wilshire Boulevard
Beverly Hills, California

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MR. VANCE: This is a disciplinary hearing in the matter of the Writers Guild America West, Inc. versus Mr. David Victor.

This matter is being heard before a Trial Committee duly convened pursuant to the Article X of the Constitution and By-Laws of Writers Guild of American West, Inc.

The members of the Trial Committee are Martin Donovan, Millard Kaufman, Barry Oringer, Jack Sher, and Leigh Vance the Chairman. Will the parties please state their appearance for the record.

MR. ORMAN: Milton Orman appearing on behalf of the executive director of the Writers Guild.

MR. VANCE: For the Respondent.

MR. HOLTZMAN: For the Respondent and respectfully reserving all rights to object to the jurisdiction of this board to proceed in this matter of Loeb and Loeb by Robert A. Holtzman.

MR. SUSMAN: Allen Susman of Rosenfeld, Meyer and Susman.

MR. VANCE: Are there any other appearances in this matter?

Will you let the record that there are no other appearances.

I have a copy of the charges and the cover letter sent by certified mail to the Respondent on July 24, 1973, with a signed return receipt attached.

I have marked those as Trial Exhibit No. 1, Notice of Disciplinary Hearing and charges of the same day, July 27, 1973, which consists of two pages.

MR. HOLTZMAN: Mr. Chairman, we have no objection to this matter being placed on the record. I do feel that it is appropriate to point out that the document to which you just referred is a two-page document. The first page merely consists of a letter of transmittal and a post office return receipt. The second critical paper is on its face a demonicated Notice of Disciplinary Hearing and charges. It is not the charges themselves. This apparently is a document within the Guild's file which has not been furnished to the Respondent. The document which you have referred which will be placed on the record is on its face merely a summary or a recapitulation of the charges and not the charges themselves.

This is significant as we will point out at much greater length in our written statement because both the Constitution and By-Laws of the Guild and the Labor Management reporting Disclosure Act requires the charges themselves signed by the person himself complaining to be submitted to the Respondent and not a mere summary or recapitulation.

It is our position that the Guild has violated its own Constitution and By-Laws and Federal laws by merely furnishing a summary or a recapitulation in the form of a Notice and not the charges themselves.

Now, subject to my comments, we have no objection to this document being made a part of the record as Trial Committee Exhibit No. 1.

MR. VANCE: Thank you.

MR. ORMAN: Mr. Chairman, just for the record, may I briefly --

Counsel is beating a dead horse. The first few hearings, the language was different and counsel might have had a very highly technical argument that no court of law would really pay any attention to. However, this particular document, the language has been changed. The language very specifically follows the Guild's Constitution. These are the charges that the Board of Directors filed and the executive director and, therefore, there is no merit to counsel's objections.

MR. HOLTZMAN: Mr. Chairman, I am not going to reply to that. The document speaks for itself. It is plainly a Notice of Summary and a recapitulation. It is not signed by the Board of Directors as counsel intimates. I stand on my argument without further comments.

MR. VANCE: I am not understanding it.

Mr. Holtzman, you are not objecting to the introduction, are you?

MR. HOLTZMAN: No, I am not objecting. It is not what the Chairman and Mr. Orman have characterized it as being.

MR. VANCE: Very well, thank you.

(Whereupon the aforementioned documents were marked as Trial Exhibit No. 1 for identification and are attached hereto.)

MR. VANCE: I have marked as Trial Exhibit No. 2 a one page letter requesting a continuance of the hearing dated August 10, 1973, addressed to Milton Orman, Esquire, the Guild's representative and signed by Mr. Robert A. Holtzman of Loeb and Loeb, Attorneys for the Respondent.

Are there any objections to the introduction of that?

MR. HOLTZMAN: No objections.

(Whereupon the letter dated August 10, 1973, addressed to Milton Orman, Esquire was marked Trial Exhibit No. 2 for identification and is attached hereto.)

MR. VANCE: Do the parties wish to make opening statements?

MR. ORMAN: The Guild waives opening statement, Mr. Chairman.

MR. HOLTZMAN: Mr. Chairman, I have handed to the Chairman and made available to each member of the Committee a rather extensive written statement 17-pages long to be exact which constitutes a statement of motions and objections to these proceedings.

In order to conserve time and to expedite these proceedings, I am not going to argue any of these matters at length. For that matter, I am not going to argue any of them at all. I do respectfully ask that the written argument of motions and objections be made part of the record of these proceedings just exactly as if I have stated these matters verbally at length and we will ask the Committee to pass on these matters as part of its deliberation in this matter.

Now, by filing this writing, I don't intend to minimize or in any way dentigrate the importance of these matters. To us, these matters are critical. The Guild has no power to act as it is doing and it has no power to impose

discipline and some of the reasons are summarized in these writings.

I respectfully request that the Committee consider these matters very, very extensively and pass on them seriously because of the importance to all of us.

I will point out that most of these matters have been the subject of extended discussions in prior proceedings of this character. However, this is the first time that the Guild has purported to proceed, to convene a disciplinary committee for the same individual twice. I think all of us are aware and if this is not the case, I now make the Committee aware that this is a second set of charges against Mr. Victor and it is indeed the second set of charges respecting precisely the same kind of conduct during the month of April, 1973.

To us, there is unfairness, inequity, inherent in this dual proceeding to which we vehemently object. We feel very strongly this Committee is being asked to do something which is not only illegally inappropriate not only by the basic concepts of double jeopardy of due process of law, but it is simply unfair and inequitable, improper in the accepted sense of the term. Now, the legal argument in this regard is set out in the papers and I am not going to belabor them further, but I do ask that the Committee take cognizance of these matters and again, to us, they are critical and to our way of thinking, these matters, these charges should be disposed of similarly in favor of the Respondent for this additional reason.

Now, one last thing, Mr. Chairman, there is in the record of the Writers Guild of America, West, Inc. of the prior proceedings against Mr. Victor. The charges initially brought against him in April of 1973, the reporter's transcript of the proceedings, the report of the original Trial Committee to the Board of Directors which, of course, the Respondent has never seen, a decision and order of the Board in respect to Mr. Victor, the Notice of Appeal and certain correspondence relating to the appeal which is presently pending. We ask that all of these matters, the Notice, the reporter's transcript of the proceedings, all exhibits of the prior proceedings, the Committee Report, the decision and order, the Notice of Appeal and the correspondence regarding the appeal, all be made part of the record of this proceeding as though contained at length in order that any appellate proceedings in regard to this matter may involve the entire record and all matters which directly pertains to the hearing here today. Will this be satisfactory, Mr. Chairman?

MR. VANCE: Did you have any objection, Mr. Orman?

MR. ORMAN: The Guild has no objection to the Trial Committee taking committee notice of prior records.

MR. HOLTZMAN: I am not sure -- I am not sure exactly how that is going to work, Mr. Chairman. If the Committee merely take notice, how are we going to be able to determine what notice has been taken of?

MR. ORMAN: Mr. Chairman, when a court takes judicial notice of any matter, it can by definition receive this matter as evidence in those cases where it deems it is

appropriate. It would seem to me that this Trial Committee take committee notice of it can incorporate those aspects of it that it thinks are relevant to this procedure.

MR. HOLTZMAN: We have made the offer, Mr. Chairman. We ask that the Committee consider all of these matters to be part of the record just exactly as if they have been stated in these proceedings today.

MR. VANCE: Thank you, Mr. Holtzman.

We will now take a recess to consider your objections and your statements.

MR. HOLTZMAN: Thank you, Mr. Chairman.

(Recess.)

MR. VANCE: This hearing will reconvene and come to order.

Mr. Holtzman, we have carefully studied your document, the statement of motions and grounds thereof in the matter of the Writers Guild of America, West, Inc., versus David Victor. Let me ask you if there is anything new in this submission which has not been heard and ruled on before?

MR. HOLTZMAN: Mr. Chairman, as I pointed out previously, the several initial grounds are the same as those advanced in previous hearings.

MR. VANCE: With one exception.

MR. HOLTZMAN: Well, it has been ruled on adversely. The matter which begins in this particular document at page 13, Motion No. 12 is essentially a summary and recapitulation of what has come before and I think that is stated here for perhaps the first or second time of characterization and the entire proceeding and violating the fundamental concepts of

the fairness of justice.

This to our knowledge, has not been proved upon previously.

MR. VANCE: I believe it --

MR. HOLTZMAN: Motion No. 13 is peculiar to the situation of David Victor. This essentially is a motion that addresses itself to the fact that this man is simply being tried again for something he has already been tried, sought to be convicted again for something which he has already been convicted of and which conviction is presently on appeal. It characterizes the entire proceedings against Mr. Victor as an individual, distinct from anybody else, and in our opinion, bordering on an outrage, Motion No. 13 then is new, unique to Mr. Victor and in our opinion is positive of the proceedings in and of itself.

Motion No. 13 is similarly new, unique to Mr. Victor and again is sufficient grounds to dispose of the matter. The other matters, as I indicated having been presented --

MR. VANCE: As I understand, then, the new matter contained in this document is set out in your Motions No. 13 and No. 14?

MR. HOLTZMAN: That is correct, sir.

MR. ORMAN: May I be heard, Mr. Chairman?

MR. VANCE: Yes, Mr. Orman.

MR. ORMAN: In regard to the fact that this Guild is alleged retrying Mr. David Victor on the same charges, this is not factually correct. Even in criminal proceedings, a

person can be tried quote convicted of a particular charge and then he may be tried again on a related charge which is not the same charge. There is no limitation even in criminal matters. In terms of Motion No. 14 which says that the Guild's Board has already issued its decision and perhaps convicted him and expelled him, there is nothing in the Guild's -- even in a normal court procedure, any court on its own motion can reconsider its prior decision. This is the basic judicial function and it is obvious the basic judicial function of the Guild. There is nothing in the Guild's Constitution that could prohibit the Guild's ruling body, the directives to reconsider a prior decision, and we don't know at this stage what they are going to do.

So, Mr. Holtzman's decision is premature and frankly I do not follow his -- in regard to his Motion 12 and 13, it seems to me that Motion 12 and 13 similarly are the same motions that the Guild is retrying Mr. Victor and I have responded to that.

MR. ORINGER: Mr. Chairman, may I ask a question.

MR. VANCE: Yes.

MR. ORINGER: I have a couple of questions about that.

I don't think that you have responded at least clearly to Mr. Holtzman's point that Mr. Victor was being selected especially and distinctly from other members who appeared before this Disciplinary Board and the act -- if I understand his objection, the act of choosing him and no one else for a second charge is in itself improper.

MR. ORMAN: One, it is, Mr. Holtzman is assuming facts

that are not in evidence. This is merely a self-serving statement, argument in his behalf. We don't know, and, as a matter of fact, he has not been selected solely. As a matter of fact, there is going to be a rehearing with respect to another writer that has been previously charged. So, Mr. Victor has not been specifically selected and this is premature. We do not know at this stage of the proceedings who else, the Board, the Guild and its Guild ruling body may decide for its reasons may have to be recharged for purposes of rehearing held for purpose of fairness.

He is just making self- serving arguments which have no basis.

MR. ORINGER: Okay, the second question is this. I understand that there is a certain loyalty caution and that is understandable, of which guys will express themselves, in a proceeding like this, but I, for one, am somewhat in the dark about this case compared to the previous case concerning Mr. Victor.

Now, can you tell us whether there is a likelihood that from the Guild's point of view, something in that first hearing against Mr. Victor was either weak or possibly the evidence was incomplete that might, not just theoretically, but as a real practibility, possibility may lead the Board to withdraw the charges? What are the possibilities of this?

MR. ORMAN: The reality is that neither I nor this Trial Committee can consider why the Board has recharged him. We don't know the facts. In all due respect to this Trial Committee, it has no right to second guess the Guild's Board

of Directors.

Sometimes, depending on whatever decision is made, sometimes in the future, the Guild's Board of Directors may have to take into consideration there have been two hearings on Mr. Victor and decide what it wants to do. Some day in the future, a court of law may have to take into consideration there have been two hearings with Mr. Victor and decides what it wants to do.

With all due respect to this Trial Committee, it is a committee of limited jurisdiction. I hate to say it, but it is true. It has been told to come here and hear these charges and find if there is any evidence to sustain these charges. It cannot, by definition, cannot consider great many ulterior situations as to draw analogy in administrative proceedings which frequently happens, it is alleged by one party that the law under which this administrative proceedings are being held are unconstitutional. No administrative agency has the legal right to make this determination. It has been the law; it has been given powers and it has to decide whether it is within its limitation, whether this particular statue under which this administrative agency is proceeding is unconstitutional which will some day be resolved to a higher court. With all due respect to this Committee, it cannot open the door to that because it does not have the jurisdiction to that nor is there any denial to that. If there is, some day in the future, Mr. Victor will have his chance to prove if there is a fundamental fairness of the hearing assuming that is one case, but it is not to be heard

at this stage of the hearing.

MR. VANCE: Okay.

MR. HOLTZMAN: Mr. Chairman, may I respond very briefly?

MR. VANCE: Yes.

MR. HOLTZMAN: Mr. Chairman, counsel had made three basic points. I would like to respond to them in the same order that they were made.

First, he says this is not a second trial of the same offense. He very properly points out that in criminal proceedings to which we are all analogizing here, one who is tried and convicted of an offense may be tried and convicted of a related offense, not the same offense, not a lesser included offense, but something different. He says this is what we are doing here. We are not trying him for the same offense.

Mr. Chairman, that is wrong. All we have to do is look at the charges and the documents speaks for themselves. I point out to the Committee that under date of June 24, 1973, Mr. Victor received formal written notice of the consequences of the prior proceedings against him and I read you now from the Notice that he received among other things that I stated, I quote "specifically Mr. Victor was charged with having crossed the Guild's picket lines at Universal City Studios, Inc., during the month of April, 1973 for the purpose of rendering services for a company against whom the Guild was at such time on a strike."

Then on the next page, under the caption "Finding of the Trial Committee and decision and Order of the Board

of Directors," paragraph number two, this is the findings.

"Mr. Victor, nevertheless, crossed the Guild picket lines at Universal Studios, Inc. during the month of April, 1973, and did at that time render services to a company against whom the Guild was at such time on strike." For this, I will add parenthetically, he has been expelled from membership of the Guild effective after 90 days of termination of the strike and fined the magnificent sum of $50,000.

That is the matter that is on appeal. The charges we now face, I now read from Trial Exhibit No. 1, "Specifically, you are charged with" -- I will skip down to paragraph number two, "Having, during the months of April, May and June, 1973, rendered services for Universal City Studios, Inc., a company against whom the Guild was at such times on strike."

Incidentally, sub-paragraph one of the present charges, "Having crossed the Guild's picket lines at Universal Studios, Inc., during the months of April, May and June, 1973, without having informed the Guild ...," and the rest irrelevant to our present discussion.

The point is this: the words may to some extent be different. Certainly, if further, the months of May and June are involved. The substance of the charge, at least, insofar as it pertains to the month of April is identical and no semantical niceties will disprove the fact that they are talking about the precisely the same conduct which is the subject of the prior findings of the Trial Committee and prior decision of the Board.

Second, counsel seems to say and this is the first time that has been brought up to my knowledge, counsel seems to say that this is really not the second trial of the same offense, rather he suggests, we are reopening the prior hearing. We are reconsidering or we are giving the Board the opportunity to reconsider on the basis of a new Committee Report, the propricty of what has happened previously.

I am somewhat surprised. We are prepared to face a new set of charges and to make objections to their propriety, if, in fact, the Board has determined to reopen the prior hearing with respect to Mr. Victor. We would like to know it. More important, we think it would be appropriate if this is the course of action to do it properly. If you are going to reopen charges, the first thing you do is vacate the prior decision. That has not been done, at least to our knowledge. The prior decision stands. Mr. Victor faces the fine of $50,000. Mr. Victor has been expelled from membership. Under the Constitution and By-Laws at this moment, Mr. Victor stands with his membership in the Guild suspended and probably most important, at this moment, the charges having not been vacated, at least not publicly.

Mr. Victor stands exposed to ridicule, contempt and obloquy in the professional community. All of these conditions exist as of this moment and yet, counsel seems to suggest that this is a rehearing, that the charges are vacated.

Mr. Chairman, if the Writers Guild of America, West, Inc., proposes to reopen the charges, propose to reconsider the matter, it should follow the normal procedure

for the matter. It should vacate the charges, vacate the appeal which is premature and reopen it -- by putting more evidence on both sides. It shouldn't come up with a second set of charges, deliver them to a new and different Trial Committee and, in effect, force the man to stand trial for a second time. In that connection, I point out that it is also normal if charges to be reconsidered to have ther heard before the same trier of fact that heard the previous charges and in this instance, the same Trial Committee so that the weight and effect of the new evidence may probably be considered in light of the old evidence, none of this has been done.

Finally, Mr. Chairman, counsel has stated that this is a Committee of narrow jurisdiction. He has stated that it is not for this Committee to consider matters relating to unfairness. This he said may be proved in some court, perhaps before the National Labor Relations Board at some time in some other proceedings. He said it is not for this Committee to consider the unfairness of the procedure which we now face.

Mr. Chairman, I disagree profusely with this. It seems to me that it is the role of this Committee to consider all relevant factors. I cannot conceive of any factor which is more relevant than the inherent, inequity and unfairness of the proceeding in this case of Mr. David Victor and I feel very, very strongly and I urge the Committee very strongly to agree with me that the unfairness of the procedure, the unfairness of the duplicate charges, the

unfairness of the whole manner in which Mr. Victor has been treated and is sought to be treated today is a matter of critical importance in this Committee's deliberation.

Let's not wait for another court hearing or Board hearing perhaps two or three year from this date. The impact upon this individual is here now today and the Committee has the decision making power in its hands there is no reason in the world for it to drop the ball in favor of some tribunal at some other time in the distant future.

MR. DONOVAN: Mr. Chairman, can I ask Mr. Orman a question?

MR. VANCE: Yes.

MR. DONOVAN: Just to clarify it in my own mind, I was obviously at different, similar and duplication of charges. I think the lawyer seems to agree with similar, but different charges are perfectly admissible. When there is a duplication of charges, it is an entirely different matter. Are there any charges related to what we are discussing here today that are a duplication of charges that have been made in the previous trial?

MR. ORMAN: In answer to your question, the only duplication is the month of April of 1973 which I think the original charges are limited to the month of April, 1973, where we now have May and June which are similar, but additional charges and I don't think we should continue going forward with this. I think that Mr. Holtzman's points have been noted for the record. If there is a fundamental fairness, there would be a time to resolve it. He has been making,

what I can only call self-serving statements assuming that the Guild's Board is unfair. We do not know. We must go on the assumption that everything has been regular and according to law and according to Guild's Constitution. I don't want to go over my argument;if at some future day there has been a fundamental unfairness, it will be resolved at the proper time. This is not unique. Even in criminal trials, a person may be charged about something that may be in violation of statute as counsel is unconstitutional. In fact, I can think of pornography, et cetera, et cetera. At some future date, it will be held that the statute is unconstitutional or fundamentally unfair, but that person has to stand trial then.

With all due respect, what we are going through is not any different in any other court in the entire world at this stage of the proceedings, the charges are regular on their face. They have been given to the Trial Committee by its duly constituted authority, the Guild Board, and I think the Trial Committee should go forward with it and Mr. Holtzman's argument can be reiterated at the proper time in another form, not from this Trial Committee.

MR. HOLTZMAN: Mr. Chairman, let me respond just for one minute. I simply point out what is already obvious and Mr. Orman has now conceded that there is a duplication of the charges for the month of April, 20 of the 84 days for which Mr. Victor stands charged.

Second, I point out that the unfairness of what we are doing here today is manifested from the record which is

already before the Committee. The very fact that we are here convened to determine the charges of this hearing.

Certainly, it is our position that Mr. Victor is entitled to the decision of this matter. There is no reason in the world why this Committee should simply give lip service to the fact that these objections have been made and ignore them. It has the power; it has the authority; in our estimation, it has the duty to hear these matters to determine them for itself and proceed accordingly.

MR. VANCE: Mr. Holtzman, the fact that we are listening to you discussing it and posing questions, I think indicates that we are far more than giving lip service.

MR. HOLTZMAN: I am very appreciative for that, Mr. Chairman. In the light of counsel's argument, I think the Committee should drop the ball and go on to something else.

MR. VANCE: All right. Millard Kaufman.

MR. KAUFMAN: Certainly, this is an informal gathering, but this isn't to say that we are not interested at this precise point. Before it gets any further, which is quite dependent upon other groups and other parties that we are quite interested in the fairness of these proceedings, I would like to ask you, Mr. Orman, one question.

Is there then a differentiation in the charges that you have talked about, anything that is qualitative rather than quantitative? By that, I mean in essence from one to three months that would duplicate the charges?

MR. ORMAN: Well, it's again, the definition of how you define quantitative and qualitative. If somebody steals

less than $200, he is charged with a misdemeanor. If he steals over $200, he is charged with a felony, as you will just call it quantitative. The law has a great many distinctions in this matter. So I don't think you -- I am saying that you can define your own parameter in merely saying that this is quantitative. I think that at least the Guild's ruling body, the Board, determined that there is a fundamental difference between April, May and June and merely April. If another form in the future date may decide there should be no difference, fine, but to draw the same analogy, at some future time, some California Supreme Court may decide there should be no difference between stealing $199 and $200, but a lower court has to make this distinction because it is in the statute books. A lower court has to say that under $200 is a misdemeanor and over $200 is a felony. I respectfully submit that this court should go forward and I am not trying to demean this body. I am merely suggesting what Justice Frankfurter acknowledged -- Justice Frankfurter for years was talking about judicial restraint. He was saying that just because we are judges and we have the cloak around us, it doesn't mean that we have --

Judicial restraint is hard for anybody. We may have the power for this and that. It does not mean we should not do these things. I am asking this Trial Committee to exercise the judicial restraint. This is not insulting. It is not demeaning. It is the hardest thing in the world for anybody to do to say you tell me, I can't answer this question. I've got as much intelligence as anybody else.

With all due respect to this Committee, I am asking you to exercise Committee restraint that on its face, that everything is regular here. If it is not regular, then at some future date, it will be decided, but right now, this is certainly -- the Committee can take on facts, there is a difference between April and on the one hand April, May and June on the other hand and I think it is sufficient for this Committee's purposes where it is dealing with a limited situation, the strike, which took place during the same months and there is a difference, a great difference. For instance, a man might violate one small rule one day, but if he violates it every day for a period of 90 days, there is not merely a quantitative difference, but there is a qualitative difference.

MR. VANCE: Mr. Siegel, do you have a standing here before us?

MR. SIEGEL: Yes, I was present at the first hearing and I think that it is important that you people meet for a moment privately and know what happened the first time with Mr. Mendonza.

MR. ORMAN: With all due respect this would be very improper, and I would object to that.

MR. SIEGEL: Because the situation is that you people weren't present.

MR. VANCE: Mr. Siegel, I think I would rule you out of order. You have no standing with this Committee.

Are there any further questions for the members of this Trial Committee?

Very well, we will dispense the hearing and call

this off for a few minutes.

(Whereupon at 11:15 A.M., the hearing recessed.)

MR. VANCE: Mr. Orman, are you ready?

MR. ORMAN: Not ready. Give me about 10 seconds.

MR. VANCE: This hearing will convene. The record will proceed.

Mr. Orman.

MR. ORMAN: At this time, Mr. Chairman, the Guild proposes to amend its charges against Mr. Victor in the following respect that he will be charged not with the entire month of April in violating the various charges that he has been charged with, but dating as of April 14, 1973, and not the first date of April.

MR. HOLTZMAN: Mr. Chairman, may I inquire through the Committee whether the motion is to amend the charges as to the charge of conduct from April 14 forward to the balance of the month and then May and June?

MR. VANCE: That is my understanding.

MR. ORMAN: Yes.

MR. VANCE: Do you have any observations on that, Mr. Holtzman, other than what you have told us before?

MR. HOLTZMAN: No. We have no objection to the motion as such. It will be our position that if the charges are to be amended in such a material respect at this time, that in the interest of justice, Mr. Victor should be granted a continuance to meet the charges as amended. This is a major deviation. Our defense is predicated on the substantial

unfairness of the charges as originally propounded and if counsel is at this late time to make such a major change in position, justice demands that we have the opportunity to respond to the charges as they are now reconstituted.

MR. ORMAN: May I be heard, Mr. Chairman?

MR. VANCE: Please.

MR. ORMAN: Again, to draw an analogy which is of the criminal proceedings, which are certainly most stringent, when the district attorney decides to drop various counts, charges obviously in favor of the defendant, there is no need for continuance being granted or need be under those situations.

To say that we are dropping -- to say that the Guild is dropping certain charges against Mr. Victor and to say somehow it denies him due process of law is a contradiction in its terms and obviously false.

MR. VANCE: May we have one second.

Mr. Holtzman, your latter motion for a continuance is overruled.

Now, relating to the statement of motions which you have placed in the record, we have given careful consideration to the motions that you have placed before us.

MR. HOLTZMAN: Mr. Chairman, is there a ruling on the motion to amend the charges? Mr. Orman has motioned to amend the charges.

MR. ORMAN: I would presume that there would be no objections.

MR. VANCE: Well, as I understood it, your objection is

based upon the continuance at this time.

MR. HOLTZMAN: My objection is based on a need to face a new or amended charges at this time. I make the objection for the record, Mr. Chairman. I understand what the Committee is saying, but I just want the record to be complete.

MR. VANCE: That motion is overruled.

MR. HOLTZMAN: Is it the Committee ruling that we are to proceed on this charges as now amended as of this time?

MR. VANCE: Indeed it is.

MR. HOLTZMAN: As for the record, at this time, we object.

MR. VANCE: Your objection will be noted.

Now, relating to your full statement of motions and objections and the grounds thereof, we have given careful consideration to this statement, Mr. Holtzman, and it is overruled.

Now, the presentation of the Guild's case, Mr. Orman, will you proceed.

MR. ORMAN: Yes. It is my understanding with the Respondent counsel for Mr. Victor that we can call Mr. Weingarten out of order and have him testify now.

MR. VANCE: Face the reporter.

Mr. Weingarten, will you give and spell your name for the record.

THE WITNESS: Arthur Weingarten, W-e-i-n-g-a-r-t-e-n.

ARTHUR WEINGARTEN,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Are you a member of the Writers Guild?

A. Yes, I am.

Q. How long have you been a member of the Writers Guild?

A. Since 1959 east and 1961 west.

Q. With reference to the recent Guild's strike, did you have any duties?

A. Yes, I was assigned to strike duty at Universal Studios first and at strike headquarters subsequently.

Q. Directing your attention to April 18, 1973, would you tell us whether or not you saw David Victor at Universal Studios?

A. Yes, I did. I saw him cross the picket line in his car at a time between 8:15 and 8:30 in the morning.

Q. How did you know it was David Victor?

A. I have known David personally for over 10 years and so I visually sighted him. I first sighted his car, a brown Mercedes sedan with the license plate VICTOR approaching the gate, drive into the gate at which time I congratulated him personally and spoke to him.

Q. When you say you spoke to him, what did you say?

A. I said, "Good morning, David, I see you are coming

to work."

David then looked aside and then saw Tony Spinner looking through the other window where he also said, "Good morning, David, I see you are coming to work." And then David looked to the rear and saw Carey Wilber standing there. Carey Wilber then said, "Hello, fink" or words to that effect at which point I said, "Go on through, David, you will have all of your friends watching you. Have a happy day."

Q. Did Mr. Victor reply to any of you at that time?

A. He was very desperately trying to slink beneath the wheel at that time and drive the car at the same time.

MR. HOLTZMAN: Mr. Chairman, I move to strike the last comment as nonresponsive to the question. The comment was an opinion, conjecture and speculation of the witness.

MR. VANCE: Objection sustained.

Q. BY MR. ORMAN: Did Mr. Victor then pass into this gate?

A. Yes, I did see him drive onto the lot, past the guard gate and to the lot itself.

Q. And after he was into the lot, did you see him thereafter go into the place?

A. No.

Q. That was the only time that you saw him on that date?

A. Yes, on that date, yes.

Q. Did you see David Victor on another date during the strike?

A. Yes.

Q. What date was that?

A. I don't know, but I did make a report and it was a written report. It is somewhere in the Guild's files.

Q. Can you pin down to a month, April, May?

A. It was in April. No, it was in March -- I am sorry -- while I was still on picket duty at Universal.

Q. March is prior to the time of our charges, so we won't ask you to testify to that.

I have no further questions of this witness, Mr. Chairman.

MR. VANCE: Mr. Holtzman.

MR. HOLTZMAN: No questions, Mr. Chairman.

MR. VANCE: Will you continue with your case, Mr. Orman?

THE WITNESS: Am I all free to go?

MR. VANCE: Yes.

MR. ORMAN: I want to call Mr. Furia as a witness at this time who spotted Mr. Victor because Mr. Furia has a prior engagement. We have agreed that he may be called out of order and interrogated by counsel for Respondent.

MR. VANCE: Well, okay.

JOHN FURIA,

called as a witness on behalf of the Respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q. Mr. Furia, would you state your complete name for

the record, please.

A. John Furia.

Q. Are you the president of the Writers Guild of American, West?

A. I am.

Q. How long have you been president?

A. Since the recent election which took effect -- I am not sure of the day -- I think it was May 25.

Q. Before that, were you a member of the Board?

A. I was.

Q. For how long?

A. For the preceding two years.

Q. And you were also president of the radio division?

A. I was president of the television and radio branch until the amalgamation took place which eliminated branches.

Q. When did that happen?

A. Again, I am not certain of the effective date. I believe it was some time in January of this year.

Q. Are you also a member of the Producers Guild?

A. I am not.

Q. Are you a producer?

A. I am.

Q. Are you the producer of the Kung Fu television series?

A. Yes.

Q. How long have you been acting in that capacity?

A. Since June 25 or 26, whatever the date of the settlement of the strike is.

Q. Have you produced any other series prior to that date?

A. I had produced a series called Insite.

Q. And when were you the producer of that series?

A. Sporadically over the past 10 years.

Q. Have you ever been a member of the Producers Guild?

A. No.

Q. Now, let me call your attention to some dates here. The first hearing in the matter of David Victor was held on May 21, 1973, and the decision of the Board expelling Mr. Victor from the Guild effective 90 days after the decision and fining him $50,000 is dated June 25, 1973.

A. May I interrupt that? I believe the decision -- just a matter of fact -- it is my recollection that it was not 90 days after the fine, but 90 days after the settlement of the strike.

Q. I think you are correct. I am sorry.

And the strike was over June 25?

A. I am not sure of that effective date.

Q. June 24 or 25?

A. Yes.

Q. Very well. In any event, during the period of May 21, 1973 and June 25, 1973, the Board of Directors of the Guild met to consider the charges and the hearing had with regard to Mr. Victor?

A. Yes, I believe it was June 15.

Q. I noticed from the Constitution that the Board of Directors consists of 19 members of whom 16 are members

per se and the others are the president, vice president and secretary-treasurer of the Guild.

Were the full 19 members present on the hearing on June 15?

A. I don't remember.

Q. Do you keep minutes of those meetings?

A. We do.

Q. I asked you before you started to testify if you could get those minutes. Have you been able to get them?

A. I have looked at the minutes to refresh my memory. I did not notice the attendance.

Q. Could you get those minutes so that we both could have the benefit of what they state?

A. I have to ask Guild's counsel if that is appropriate. The minutes are privileged. I don't know what extent --

MR. SUSMAN: Do we have Watergate all over again?

MR. ORMAN: I think that I will draw the analogy to Watergate in this respect and I will take Senator Irwin's position. I think in fundamental fairness, that Mr. Furia should have the minutes and he may use them to refresh his memory as to those things specifically limited to David Victor, and I presume that we will make some kind of adjustment that opposing counsel can see the minutes insofar as they relate to David Victor and David Victor only.

I think there should be additional limitations which we in no way would hurt or harm or prohibit counsels for Mr. Victor in presenting their case and that is, I do not think that the actual people on -- the actual names of

the people on the Board -- strike that. I don't chink that we should show opposing counsels who voted to uphold the Trial Committee's findings and who voted against the Trial Committee's finding. I don't think that is relevant.

MR. SUSMAN: Well, we can state that when we get to it, Mr. Orman. I would like to see the minutes and so that we can determine was there first of all --

MR. ORMAN: Well, I think we should place limitations --

MR. SUSMAN: As to the limitations on how much it can be made a matter of public record, we can determine that later. I see no reason why we can't take a look at them.

MR. ORMAN: Well, when you say public record, I think that the very fact showing it to opposing counsel almost by definition could be considered as public record.

MR. SUSMAN: Why don't you get them first and then we will see what you are alleging to disclose and what you are not.

MR. ORMAN: May we go off the record.

MR. VANCE: Yes.

(Off the record.)

MR. VANCE: This hearing will come to order and we will go back on the record.

Are you ready to continue, Mr. Orman?

MR. ORMAN: Yes. At this point, the Guild is taking a decision which it took before. As we all know, the present charges have been amended so as they are limited to the dates of April 14 forward in time and, therefore, any material with respect to the previous charges are irrelevant and since

the Guild considers the minutes privileged as any other organization would consider its minutes privileged and since there is no concept -- counsel has not presented any valid reason for the presentation of those minutes, the Guild at this juncture will not furnish the minutes or any other documents requested by counsel for David Victor with respect to the prior charges.

MR. SUSMAN: Mr. Chairman, may I be heard?

This is one of the most outrageous statements that I have heard. A man has been expelled from this Guild, has been fined $50,000. He is now being brought up on another series of charges which is nothing more than a continuation of the same charges that he has been orginally subjected to the most serious penalties and for this Guild which has been an exponent of free speech and fairness, disclosure of all relevant information on any phase of its operations or any phase of the matters of which it is interested to take this kind of a position which is inconceiveable to me and I feel that this is such a profound and fundamental matter that these proceedings ought to be dismissed out of hand in the light of the position expressed by the Guild.

MR. ORMAN: May I respond to that, Mr. Chairman?

MR. VANCE: Yes, please, Mr. Orman.

MR. ORMAN: I think Mr. Susman is begging the statement that it is relevant. He has presented no evidence to this Trial Committee to show it is relevant. I don't see the relevancy. I don't see its relevancy, perhaps, he has a valid reason, but he has an obligation, at least, to demonstrate

the prima facie relevancy.

MR. SUSMAN: Mr. Orman, one of the statements that you made along the way and this is that this was in essence or a rehearing and a continuation and reexamination of the matters that have already been transpired with regard to Mr. Victor and how on the God's green earth can anyone have a rehearing of these kind of things without an examination of what has transpired to this point?

You have a Guild's Constitution. We have a right to know whether or not you follow the Guild's Constitution. We have a right to know anything that is relevant to this kind of proceedings with its serious consequences, much more so in the case of Mr. Victor than with regard to anybody else with the exception of one other person that is yet being determined by this Board and by this Guild.

So, I think this is obvious that it really requires no further argument.

MR. ORINGER: May I ask a question, Mr. Chairman?

MR. ORMAN: May I respond?

MR. VANCE: Response first and then.

MR. ORMAN: In answer to Mr. Susman, his argument may have been valid when the Guild was still charging Mr. Victor was violating, certain violations dating from April 1, but the Guild has since amended the charges. So the Guild is no longer saying this is a rehearing, et cetera. In substance to the effect, this is a completely new hearing with the amended charges by the Guild, the new date of April 14. Therefore, anything that has happened before is completely

irrelevant. It is completely irrelevant as if a person --

Again, if I am to draw the same analogy, if a person is charged with one crime and he is up to be on a hearing with another crime, the reason why a jury determines so and so for what it is and for the purposes it did at the first trial is completely irrelevant to the second trial.

MR. VANCE: Mr. Oringer.

MR. ORINGER: A couple of questions about that and first to Mr. Orman, but I would like Mr. Susman's comments on this also.

I am just a little bit disturbed at the notion that this Committee would be placed in a position where it is making rulings concerning the Board, and I am not sure that this Committee would have this jurisdiction to make.

Mr. Susman ought to have the right to respond to that.

MR. SUSMAN: You are being asked to rule on charges against David Victor arising out of his conduct during the labor management strike. There has already been an adjudication by the Guild through its various channels expelling Mr. Victor from membership and fining him $50,000. Now, this Committee, as I visualize it and I have been through a number of these hearings, is not a machine. It is not set up simply for the purpose of determining what Mr. Orman or anybody else in the Guild wants it to determine. You are a fact-finding tribunal. You make recommendations to the Board. You have to take into account all relevant matters. Those relevant matters include a full and complete knowledge

and examination of everything that has transpired today with regard to Mr. Victor. That is one of the fundamental factors. You not only recommend innocence or guilty, but you also recommend the disposition of the matter whether he should be fined, whether he should be expelled twice however that might work or anything else that in your judgment you feel is fair and proper in this situation.

Gentlemen, I don't see how anyone can conceiveably conceal that function and that obligation without knowing as much as possible of what has existed up to this point with regard to Mr. Victor's conduct during the strike. Now, there has been a prior Committee; it has made a recommendation. It has gone up to the Board; the Board has made its decision that has to come down. These are things that you need to be familiar with or else you are operating entirely in the dark and it is bad enough to have this kind of second session thrown against Mr. Victor conceiveably if you accept Mr. Orman's statement every day to be a different charge and every day during a strike for the same conduct could result in a different hearing before a different tribunal and a different result.

I think it is observed on the face of it, but passing that, it is quite obvious, it seems to me, to everyone else in this room, that you are entitled to know exactly what has happened and that is the relevancy of it and it is so obvious that I really can't understand how there can be a question about it.

MR. ORINGER: Can I ask one, second question. I am

just groping for facts in this and I am trying to construct some kind of analogy because this is a new situation for me as a member of this Board.

Let's say a court made a ruling on a case and it was appealed by one of the parties to a higher court and the higher court rendered some sort of decision which somehow brought the case back to the original court.

Now, is it within the authority of the lower court to demand that the confidential deliberations of the higher court be made to it of its entirety?

MR. SUSMAN: No, but it is entitled to the record of anything that has transpired in that case.

MR.ORINGER: I mean specifically the deliberations because what you are --

MR.ORMAN: May I answer that?

You know the answer is obviously no. No court -- when judges get together, their deliberation is by definition privileged and private.

I think everyone of us has read when the Supreme Court goes into deliberation, it goes into a soundproof kind of room with armed guards, et cetera, and to draw another analogy in answer to Mr. Susman, when a jury deliberates, you may not, and again this is another analogy, you may not thereafter try to overturn the jury's verdict based upon what went on in the deliberations. There is one exception to the rule and that is by chance if the jury shoots craps and says heads he is guilty and tails, he loses that is the one time that you could inquire into what a jury has done and

overturn it, but apart from that, what the jury says is privileged. It cannot be inquired into and you may use this as a reason to set aside a prior verdict. It is the same analogy.

What a previous Trial Committee has said or deliberated may not be inquired into. What the Guild, Board then did with reference to the Trial Committee's report is privileged information and may not be inquired into.

MR. SUSMAN: Let me just say this. The analogy is really no analogy at all. At least to this point, I haven't asked for who said what. If you do have official records, you have minutes of what transpired -- you have all been watching television in the past several months and I think everybody has gotten a pretty good education about the difference between conversation and something that exists in regards to conduct of an organization whose conduct is involved in some pending proceedings. All I asked for up to this point are the minutes and the recommendations of the Board which is referred to in the decision that has been handed down by the Board as specific reference in that decision to the Trial Committee submitting in writing its findings, conclusion and recommendation to the Board of Directors. It is inconceiveable to me that somebody who has been charged for the kind of thing that Mr. Victor has been charged is not entitled to know what the Board or Committee that has made these recommendations has actually recommended. Your Constitution provides for certain procedures to be followed, to what the Committee can do and can't do. We are entitled

to know whether or not that has been accomplished.

MR. VANCE: Let's clarify something, Mr. Susman. I understand the charges are being amended so it is not a rehearing of the charges.

How does the deliberation of the original charges affect your case now?

MR. SUSMAN: Because -- let me answer you this way. All of this involves one continuous act of conduct. Let's skip semantics. Let's skip legality and when you get down to facts, this is one continuous charge of conduct. That is essentially what the Guild is charging. They haven't brought up anything new. All they have said is that the same thing happened throughout this period and it comes at no shock to anybody here that Mr. Victor acted as an executive producer during the period of the strike. So I think that we are kidding ourselves if we try to put this into a context of something new and different. It just isn't. One of the fundamental questions that we have and one of the fundamental things that we are entitled to know is whether what I just said is true or isn't true. What we are entitled to know is what the Board did; what we are entitled to know is what the Trial Committee did. You can't go ahead and penalize a man; you can't throw one of these Committee members out, it seems to me, out of the Guild which at least in part is necessary or importance for his livelihood without giving that man an opportunity to know what you've done and why and what your recommendations were.

That is so fundamental that it doesn't seem to me,

as I said, and I repeat myself I don't see how anybody can argue the point.

MR. VANCE: It seems to me that you are entitled to know what the Board did and you do know.

MR. SUSMAN: I think we are entitled to know what the Trial Committee did. I think we are entitled to know what the recommendations are, whether or not it was in accordance with the Constitution. We are entitled to know whether or not this is one continuous activity which in essence as it is claimed to be or whether it is entirely different kind of thing. We have made a double jeopardy motion in this thing. We are entitled to be able to prove it and to be given the opportunity to do that.

MR. VANCE: Now, let me get my position so that I understand you.

I think you are entitled to know what the Board did, but as I understand it, you do know what the Board did. They fined Mr. Victor $50,000 and later expelled him from the Guild. Now, how they arrived at that decision, I am sure it is not a matter of public record.

MR. SUSMAN: I disagree wholeheartedly with you, Mr. Vance. We are entitled to know that. I tried to stay away from answering your questions from any reasons to legal principles because obviously very few of us are lawyers here with the advocates. Let me say this. The fairness of the Board's action is subject to court determination. I don't think that anybody will quarrel with that statement. Mr. Orman is silent, and I think that he cannot quarrel with that.

Among other things, we have Federal statutes and we also have state laws which so hold. The fairness of their actions is to be taken into account. Now, in order to determine the fairness or unfairness of what's done, you have to know the considerations that motivated the action. You have to know why in Mr. Victor's case it is $50,000 and explusion and in somebody else's case, it is $100.

MR. VANCE: Mr. Susman, we are talking now about previous occasions.

MR. SUSMAN: You call it previous, Mr. Vance. That doesn't make it previous. I say it is all one continuous ball of wax. How can you determine what kind of recommendations to make without completely what happened at the first go around?

MR. VANCE: Because we are here to hear facts presented to us and it is upon those facts that we intend to make our judgment, not on what happened before.

MR. SUSMAN: That is a completely, in my opinion, a complete misinterpretation of the function of the Trial Committee of a Guild in the matter of a case of this kind.

MR. VANCE: If be so, I think, when the matter proceeds to other levels, I think the judgment will rely upon that level.

MR. SUSMAN: I can't force disclosure of those documents. All I can do is voice my objections as strongly as I know of in this kind of procedure that is being invoked.

MR. VANCE: We are taking note of that, Mr. Susman. I am not making a ruling; I am just asking for a clarification.

MR. DONOVAN: Could I ask a question?

It was my understanding, Mr. Orman amended the charges, presumably they now exist from April 14, that it was with your agreement that that was the way that we were going to proceed, am I in error in that remark?

MR. HOLTZMAN: That was the ruling of the Committee, but we objected and the Committee ruled against our objection.

MR. DONOVAN: Because what I was going to say, as I understood you to say from that objection that we should proceed from April 14 on. If you were going to question the previous ruling, which you obviously have a right to do, it would just seem to me that this is not the time and place. What we are talking about here, hopefully and presumable things that happened subsequent to that date.

MR. SUSMAN: It is more than a question. It is a question laying before the Committee, part of what is now going on. That is really what we are talking about. How can you decide what to do with Mr. Victor when you don't know what has been done with Mr. Victor. You have one continuous course of conduct.

MR. DONOVAN: Excuse me. I disagree. If what we are being asked to consider is what Mr. Weingarten testified to, I think it is perfectly possible for us to come to whatever conclusion it seems logical to come to without reference to anything that happened before or after a date. I think you will not --

MR. SUSMAN: I think it is impossible.

MR. VANCE: Mr. Susman, I think that we are trying to

show you that we are not here just to bang the gavel. We have given close attention to everything you have said. In light of that, I am going to call a caucus to debate this matter.

If you will excuse us, we will return to the record at some later time.

(Off the record.)

MR. VANCE: The hearing will reconvene.

Mr. Susman, we have given our consideration to your point and we feel that our duty here is to concern ourselves with the amended charges and everything that has occurred after April 14 and therefore your objections are overruled.

MR. SUSMAN: Very well. My objection to the ruling of the Committee is stated for the record.

I think so far, I have only been dealing with the minutes of the meeting which resulted in the conviction of Mr. Victor. I would also like to have the findings and recommendations of the first Trial Committee.

Are you refusing to make those available to us, Mr. Orman?

MR. ORMAN: Yes and for the same reason.

MR. VANCE: That is exactly the same ruling I just made; it applies to that.

MR. SUSMAN: I just want the record to reflect that the ruling of the Committee is also stated on the record.

MR. VANCE: Very well, thank you.

Q BY MR. SUSMAN: Let me ask you this, Mr. Furia,

at the time that the Board made the decision with regard to Mr. Victor, did it have a transcript of the proceedings of May 21, 1973, written up by the court reporter like the one that I have in front of me?

MR. ORMAN: I will object for the Guild. I think, Mr. Chairman, I think Mr. Susman is going on the same line of questioning by a different route. He is trying to inquire into the deliberations of the Guild's Board. This is privileged. It is as privileged as any jury's deliberations, as any judge's deliberations.

All that is necessary -- strike that. It is privileged information and it is not relevant to this hearing because that deliberation concerns a completely different hearing.

MR. VANCE: Okay. Mr. Susman, will you conform yourself to the matters before this trial.

MR. SUSMAN: Mr. Chairman, I am going to make the record the best way that I know how. I think that we are entitled to know whether the Board of Directors of this Guild had a transcript of the first hearing on which they were making their decisions before they made their rulings, that is all I have asked them.

MR. VANCE: Mr. Susman, I have already ruled that we are now concerning ourselves with matters from April 14 on and we are not concerned with what happened from the first on.

MR. SUSMAN: Do I get -- are you ruling that I am not entitled to an answer to that question?

MR. VANCE: Certainly. I am so ruling.

MR. SUSMAN: Very well.

Q. Mr. Furia, let me ask you another question, but bear with me.

In the Hollywood Reporter of Monday, August 20, 1973, appeared the following report.

"The WGA denies it is pooling disciplinary actions. A report that the Writers Guild is pooling plans to press strike disciplinary proceedings was refuted by WGA President John Furia, Jr.

"It is not being pooled nor is it being exasperated. He indicated --

A. Exacerbated -- I am sorry.

Q. "He indicated new trial decisions might be submitted as scheduled Board's meeting Wednesday.

"A report elsewhere that additional charges have been brought against hyphenate David Victor was denied. Furia said a new hearing has been called to extend original allegations of the period of time Victor is accused of crossing the picket line to report to work."

Is that a correct statement of what you said?

A. The first part is. That is the statement that the Guild -- my statement that the Guild was pooling or exacerbating

disciplinary proceedings.

Will you read the second part again, please.

Q. "A report elsewhere that additional charges have been brought against hyphenate David Victor was denied."

A. And the rest of it, please.

Q. "Furia said that a new hearing has been called to extend the original allegations that Victor was accused of crossing the picket line for to report to work."

A. I think that the two statements that are written there are not completely accurate. On the face of it, it seems quite contradictory. The last sentence is, I think, very accurate of what I said.

Q. By the statement of that, do you mean where you said, "The statement that Furia said that a new hearing has been called to extend original allegations for the period of time that Victor was accused of crossing the picket line to report to work"?

A. Correct.

Q. And the prior statement above, it is denied; is that incorrect according --

A. Yes, I think they are self-contradictory.

Q. Very well. Now, with regard to these new charges against Mr. Victor, on whose request or suggestion have those charges been brought?

MR. ORMAN: Objection, Mr. Chairman. Again to draw the

analogy, you may not -- if an indictment -- if an information is filed against a person by the district attorney, you may not inquire into the reason why the district attorney decided he wanted to file an information. The reason why people take their actions is irrelevant. Why an information is sought against part A and not sought against part B is irrelevant. There are limitations into which you may not inquire and why the Guild, Board has decided to do something is completely irrelevant and there is no question of due process, et cetera. All of the due process -- counsel is continually citing Labor Reporting Act in which all it requires is that you must state the charges against the party which has been done. You must give them a chance to meet those charges. You must give a full and fair hearing which is certainly being done and you are inquiring as to why charges have been filed is completely irrelevant in every judicial system, and I don't think that this Trial Committee has to --

MR. SUSMAN: Mr. Orman, I don't want to debate with you. I don't think you heard my question. My question was upon whose request was it that the charges were filed?

The Constitution provides the charges may be filed at the request of the Board and by a member. I am entitled to know.

MR. ORMAN: Yes, you are entitled to know.

MR. SUSMAN: Your answer to that question is not responsive to my question. Your answer is the Constitution and it is simply not responsive to my question that I asked.

MR. ORMAN: May I be heard again, Mr. Chairman?

MR. VANCE: Yes, please.

MR. ORMAN: I think this Trial Committee and also counsel can take due notice of the charges in which it states on page 2 of the Trial Committee Exhibit 1 Notice of Disciplinary Hearing and charges "Please take notice that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, West, Incorporated, the Board of Directors of the Guild filed with the Guild's executive director the written charges set forth below."

There is your answer.

MR. SUSMAN: I am entitled to know from the witness, I believe rather than from you, Mr. Orman.

I think that I am entitled to an answer to that question. I think that a member of this Guild is entitled to know who his accusor is, whether it is the Board or some member.

THE WITNESS: The Board.

MR. SUSMAN: Very well.

Q. Now, Mr. Furia, I notice that the decision involving Mr. Victor came down on June 25.

Is there any particular pattern to the way these determinations are made as far as the sequence of hearings and the considering of the decisions as they are concerned?

A. The only pattern is that the availability of the Board to make its deliberation.

Q. I notice the example of Jack Webb was the first hearing that you have had and I understand that there has been no hearing in the decision.

Is it part of the Board practice to take these out of order?

MR. ORMAN: Objection. Mr. Chairman, it is completely irrelevant. The Board deliberations and methods of deliberations and methods of operations are completely irrelevant to this proceeding.

MR. VANCE: I think it is fair to ask Mr. Susman, what is your thrust of your questioning here?

MR. SUSMAN: I am entitled to show discrimination of Mr. Victor. I am willing to show what I am getting at. But, I am not getting any answers.

MR. VANCE: The Guild's position remains the same.

MR. SUSMAN: Was there another question after that?

MR. ORMAN: Mr. Chairman, may we go off the record?

MR. VANCE: Yes.

(Off the record.)

MR. VANCE: Back on the record.

Go ahead.

Q. BY MR. SUSMAN: I said that I noticed the first hearing has not resulted in a decision and the decision has not come down to the order in the sense of following sequence of hearings.

Is there any particular reason why that sequence has not been followed by the Guild?

MR. ORMAN: Objection. Mr. Chairman, it is the same line of inquiry why or why not any procedure has not been followed. There is a logical reason for it. It is completely irrelevant to this partic lar hearing.

MR. SUSMAN: As I say that we are entitled to show discrimination to Mr. Victor.

MR. ORINGER: I would like to say, Mr. Chairman, this entire line of questioning is totally out of order for the following reasons.

Mr. Susman states that matters pertaining to the fairness of the proceedings are proper grounds for investigation here and to my knowledge, there is a proper form for that and that is these things go from the Trial Committee to the Board and the next step, if the defendant wishes to appeal to the membership and at that time, I understand and please correct me if I am wrong, if the defendant feels that he has been treated unfairly by the Board or previously by the Trial Committee he may raise that issue before a meeting of the entire Guild membership, but it seems to me to be totally out of order that a lower body now be asked to determine the fairness of the proceedings in this case of a higher body.

It is proper form for that, Mr. Chairman, I submit is the membership of the Guild and this whole line of questioning is just out of our jurisdiction.

MR. SUSMAN: I understand that question. Is it the position of this Board that I am not entitled to show bias or discrimination against Mr. Victor?

MR. ORINGER: Mr. Chairman, I would submit -- the answer is yes, but not at this particular forum if he is addressing matters that are inparticular to Board's proceedings. The forum for that is, if so desired by the defendant, is the

membership of the Guild, not referring back to this Committee. We have no jurisdiction.

MR. ORMAN: May I be heard?

MR. VANCE: Of course.

MR. ORMAN: Of course, you may show bias, but you may show bias within certain logical methods and just referring to previous hearings -- it is not. I submit it is not the appropriate to show bias and discrimination. You must link it. You must demonstrate it. It seems to me that anything that is bias and related to this particular hearing is with a logical frame of record.

It seems to me that you are continually prying into the method with which the Guild as an entity found Mr. Victor liable in a preceding hearing and that I submit is irrelevant for this proceeding and again I agree with Mr. Oringer that in a different forum, you may be able to link them both, in a different forum, a higher forum in a court of law, you may be able to demonstrate a sequence of bias or prejudice, but this is not the proper forum for it.

MR. HOLTZMAN: Mr. Chairman, may I arise in a spirit of outrage and indignation. I think that the comment that counsel has been making over these last minutes is just antagonistic to any sense of order of justice.

What counsel is doing, is saying is sure you can raise bias, you can raise prejudice, you can raise indignation. You can do it at the meeting of the Guild's membership and you can do it at another court but we are going to withhold the facts from you. You are going to be able to voice your

suspicions, your objections, your concerns, but we are going to preclude you from obtaining the evidence on which the logical rejection in this regard should be based.

And furthermore, counsel is saying that this Committee charged with the responsibility of making the Board's recommendation to the Board in the first instance is also to be precluded from access to that evidence, to that information and therefore is being precluded from predicated his decision on what is probably the most significant consideration that should affect its decision.

MR. VANCE: That is quite clear from your observation.

MR. DONOVAN: I was going to say that I think that we are all interested in the fairness of the proceedings. I think that the simple question is what are -- what is the subject matter of these proceedings? My understanding was that whatever the charges are that the Guild is bringing against David Victor, whatever they may be, and I really think that is what we are here for and that is our jurisdiction and that is what we should be called to make whatever decision that we can possibly arrive on and I think that the more that we stay on that subject, the more likely that we are apt to be fair about the thing.

I do agree that there are other forms, the appeals and whatever, we can question the procedure, but I don't think as Mr. Oringer has said that that is our bag.

MR. ORMAN: May I respond to that?

MR. VANCE: Yes, please.

MR. ORMAN: I would like to note for the record that

contrary to Mr. Susman, in a different forum, he may be able to get all of the documents that he requests. There is something that is called the Rules of Discovery in court in which he may get almost everything that he possibly needs.

Now, when that time comes and when Mr. Susman or whoever represents Mr. Victor goes before that court and says that we would like to see this, the court can then say for purposes of its hearing that fundamental justice requires that you should be given this and you should be given that and the court may say that you should be given the minutes and you should be given the Board's deliberations and in order to demonstrate a pattern of bias and prejudice -- again, this is the proper forum and the proper time and he will at that proper time have that. This is the not the proper forum and I again I am saying which we have said time and time again, that even when you are charged criminally, you must wait until the proper time to raise your arguments and that's all that Mr. Victor is being called upon to do.

MR. VANCE: Well, let me make this ruling, Mr. Susman.

MR. SUSMAN: Let me make just one statement.

MR. VANCE: Go ahead.

MR. SUSMAN: If you take Mr. Orman's statement at face value, it means that this tribunal has no sueful purpose because everything meaningful has happened beyond its level, and what he is saying, in effect, nothing, it is in the appellate stage where it all becomes significant. That is one of the most unique concepts that I have ever heard in my life and I have been trying lawsuits for over 20 years including

administrative tribunal proceedings, and I think that we are at least entitled to some -- to some opportunity to show that Mr. Victor has been unfairly singled out by the Board of Directors of this Guild, and I am trying the best way that I know how to make that point.

If you gentlemen say I can't do it, I don't have any recourse except on another level.

It seems to me that you shouldn't make that kind of a ruling. It is basically unfair as well as contrary to all kinds of legal principles.

MR. VANCE: Well, it seems to me, Mr. Susman, that earlier you said that we would skip the legality and semantics in order to get to the grit of it.

MR. SUSMAN: I have skipped as much as I can --

MR. VANCE: I think that my ruling has to be here that you have adequate provisions through the courts to obtain everything that you wish to see. As far as discrimination and bias is concerned -- my only concern as Chairman of this Committee is whether or not those discriminations of bias is with the members of the Committee here in this case.

And I repeat what I said to you earlier, if you believe that there is bias in the way that the charges were drawn, you have adequate provisions under the law.

So I am going to rule that we do not proceed with this line of questioning. We should try to concern ourselves with the facts, the matter in the charge before us.

MR. SUSMAN: Thank you, Mr. Chairman. Let me just ask one more question along this line before you make a ruling

on it?

MR. VANCE: If you wish.

Q. BY MR. SUSMAN: Mr. Furia, do you have an understanding either expressed or not with the directors of the Guild that hold back on proceedings against -- directly against hyphenates and emphasize proceedings against producer hyphenates as far as disciplinary proceedings are concerned?

MR. ORMAN: Same objection, Mr. Chairman. It is completely irrelevant for the purpose of this hearing.

MR. VANCE: I have to sustain that objection, Mr. Susman.

Q. BY MR. SUSMAN: Were you aware when the charges were brought against Mr. David Victor either the first set or the second set? Were you an officer of the Producers Guild?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: I think we have ruled on this line of questioning, Mr. Susman.

MR. SUSMAN: I want to make a record if I may. I think I am entitled to that.

MR. VANCE: We will give you every privilege and time and so forth.

Q. BY MR. SUSMAN: Were you aware when the charges were brought against Mr. David Victor that a proceeding is pending in the courts of the State of California brought by the Writers Guild against the Producers Guild pursuant to which the Writers Guild, pursuant to which the Writers Guild is trying to establish that the Producers Guild is not going

by the Labor Union?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

Q. BY MR. SUSMAN: Is the proceeding against Mr. Victor part and parcel in an attempt to discredit the Producers Guild?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

Q. BY MR. SUSMAN: Are there any particular relevance, Mr. Furia, to the timing of the decision on June 25, the day that the strike was over and the bringing of these new charges against Mr. Victor, the so called new charges?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

MR. SUSMAN: May I have one moment, Mr. Vance, I am just about through with Mr. Furia. Give us just a moment, Mr. Chairman.

MR. VANCE: Please, take your time.

MR. SUSMAN: I have just another area.

Q. Do you know the composition of the Trial Committee in the first hearing? Do you know who was on that Trial Committee? If you don't, I will mention the names -- James Poe, Nate Monaster, Emmet Lavery, Michael Blankfort and Christopher Knopf. You are acquainted with all of those gentlemen, aren't you?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained. Mr. Susman, we are trying to give you every opportunity to make your point. I think you

have adequately made it.

MR. SUSMAN: This is a different area that I am getting into, Mr. Vance. I think, again, for the benefit of what may come after this hearing, I am entitled to make a record or to try to establish what I am trying to show.

I can't get the answers if you overrule what I am trying to show.

MR. VANCE: Proceed with at least one more question.

MR. SUSMAN: All right.

Q. These gentlemen that I just named are former officers or present officers of the Writers Guild; isn't that correct?

MR. ORMAN: Same objection, Mr. Chairman.

Q. BY MR. SUSMAN: And were they deliberately selected because of their official capacity in the Writers Guild?

MR. ORMAN: Same objection, Mr. Chairman.

MR. SUSMAN: Did you sustain the objection to it?

MR. VANCE: I sustained the objection. It is a matter of record.

MR. SUSMAN: Very well.

MR. HOLTZMAN: Mr. Chairman, I have just a couple of question to the witness while he is here present.

EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Furia, under date of April 16, 1973, the Hollywood Reporter made reference to a statement issued by the Guild in connection with the original charges labeled

against Mr. Victor and others and I will just quote very briefly from the newspaper article concerning that Guild statement.

I quote,

"The action was announced in a strongly worded statement issued Saturday at the direction of WGA Executive Director Michael Franklin following a Board meeting Friday. The Guild took premised hard line on strike observance and tacidly admonished management that it does not propose to give further grounds on hyphenate jurisdiction.

"Those convicted," declared the Guild statement, "will appear on a roll of dishonor and be listed in Guild publications in perpetuity so that Guild members for years to come will never forget. A Guild spokesman characterized those members guilty of scabbing as Pariahs who have betrayed their colleagues."

Were you present at the Guild meeting on Friday referred to in the statement which I have just read?

A. I just don't recall the date. There were so many meetings during that period.

Q. I am referring to a meeting which would have referred according to this newspaper on Friday the 16th of April, 1973.

MR. VANCE: Could I hear that again?

MR. SUSMAN: Friday, April 16, 1973.

THE WITNESS: Would you refresh my mind by repeating the very beginning of that? I am trying to refresh my memory as to what the meaning referring to the article has.

Q. The article has reference to a statement of concerning Mr. Victor and others and characterizing them as Pariahs who have betrayed their colleagues made following --

A. I don't believe there is anything with reference to Mr. Victor in what you read me.

Q. The article has specific reference to Mr. Jack Webb, David Victor, John Epstein, John Mantley and Herman Saunders --

A. Would you read that again. I am sorry. There are so many articles that I have not been able to keep up with you.

Which meeting are you referring to, now?

Q. I am referring to the meeting, to the Board meeting Friday, which preceded the issuance of the statement which I have just read on Saturday at the direction of WGA Director Michael Franklin.

A. It is my recollection that I was present.

Q. Was the statement to which I have just averted discussed at the Board meeting?

A. Yes.

Q. And did you participate in that discussion?

A. Undoubtedly, I did, yes.

Q. All right.

A. To the best of my recollection.

Q. Can you tell us the substance of any discussion

which occurred at that meeting on Friday of and concerning David Victor which resulted in his being characterized "Pariah who has betrayed his colleagues"?

A. I don't believe there was any discussion of a particular individual, but rather a discussion as to attitudes for people who violated trade orders.

Q. Was Mr. Victor then included as one of those "people who have violated strike orders"?

A. You mean in our discussions?

Q. Yes.

A. Probably. My recollection is hazy.

Q. To the best of your recollection, can you tell us the substance of the discussion of and concerning this group of persons which Mr. Victor was a member?

A. As I said before, I don't believe there was any particular discussion regarding them as individuals, but rather as among a group of people who had violated strike orders.

Q. Incidentally, were those persons who were discussed with the exception of Mr. Crichton were all producers?

A. You have to read me this again.

Q. All right. Mr. Jack Webb, David Victor, Mr. Sy Chermak, Mr. Epstein, Mr. Saunders, Mr. John Mantley, Mr. Robert Blees and Mr. Crichton -- with the exception of Mr. Crichton, those gentlemen are all producers, are they not?

A. Mr. Blees, I think was not a producer; he was a story editor.

Q. With that additional exception, is my statement

correct?

A. Yes.

Q. Are those persons with the exception of Mr. Blees and Mr. Crichton all members of the Producers Guild of America?

A. That I don't know.

Q. Well, is it a fact that they are all persons who were active in the Producers Guild of America?

A. I don't know.

Q. Now, what was said of and concerning this group at the meeting on Friday, April 13, 1973?

A. As I said, I think I indicated that the discussion, at least, my recollection of it is quite hazy, my recollection is that there was not discussion of these named individuals as individuals, but rather the Board attitude toward people who had violated strike orders what the Guild -- what kind of position or what kind of statement the Guild should make about them violating strike orders.

Q. And what was the attitude of the Board which was discussed?

A. The attitude was that the Board should take a very firm stand regarding violations, that disciplinary procedures should be promptly and strongly implemented, and I think that is more or less a quick summarization of what the attitude was which could be only expected during the course of the strike.

Q. Was there also a decision to issue a public statement concerning these individuals?

A. I'm sure there wasn't a decision to issue the statement, but the statement itself, I believe was left to the executive director.

Q. Was there any direction given to the executive directors as to what should be contained in that statement?

A. What I just indicated.

Q. Would you state that again for the record, please.

A. (No audible response.)

MR. DONOVAN: Mr. Chairman, I must say it seems to me that we are still not getting to the point of the hearing.

MR. VANCE: I have to overrule you here.

Let Mr. Holtzman continue.

MR. ORMAN: I think the question has been asked and answered.

MR. HOLTZMAN: Well, I am not sure that it has, Mr. Chairman.

MR. ORMAN: Mr. Chairman, can we have the reporter find the question.

MR. VANCE: Yes.

(The pending question was read by the reporter.)

Q. BY MR. HOLTZMAN: Will you state for us please, Mr. Furia, what directions that were given by the Board to the executive director in connection with his preparation of the press release concerning Mr. David Victor.

MR. ORMAN: At this time, I am going to object, Mr. Chairman, to the statement. I thought perhaps counsel might be leading to something relevant. I don't object in difference

in an attempt to give him a chance. I don't see any relevance as to what it has to do with this hearing and on this case and, therefore, I base my objection.

MR. VANCE: That is my feeling on it, Mr. Holtzman. The objection is sustained.

MR. HOLTZMAN: Mr. Chairman, I am going to ask a few more questions just to tie this down and to make sure that the record is complete in this regard.

Q BY MR. HOLTZMAN: Is it not correct, Mr. Furia, that the executive director was then and there directed to prepare a most strongly worded statement in the sense that words would permit of concerning the members of the Guild to which have heard?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

Q BY MR. HOLTZMAN: Is it not a fact, Mr. Furia, that the executive director was instructed to characterize the members of this group as he did as Pariahs who have betrayed their colleagues?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

Q BY MR. HOLTZMAN: And is it not a fact that he was instructed expressly to make this statement of and concerning Mr. Victor and among others?

MR. ORMAN: Same objection.

MR. VANCE: Sustained.

MR. HOLTZMAN: Just one moment, if I may, Mr. Chairman.

Q Mr. Furia, th Hollywood Reporter on Wednesday,

April 18, 1973, contains a summarization of a statement by then Guild President Randall MacDougall of and concerning Mr. David Victor and others and I will read the introductory language in brief recapitulation in which it set forth.

> "MacDougall declaring their guilt has been predetermined, scoffed at protests by six of eight studio hyphenates accused of strike breaking (Hollywood Reporter 4/16/73) that the Guild statement on their coming hearings amounted to trying, convicting and sentencing them in advance.
>
> "Of course they are guilty," MacDougall reacted to the indignant response from the hyphenates charged with scabbing. "There's no question about it. They have gone through our picket lines and they have violated their commitment to us as members of the Writers Guild. These people are apparently guessing at what a Trial Board will say. In other words, they apparently feel guilty."

The question to you, sir was, was there a Board meeting at or about the time of the publication to which I have just averted wherein the matter of this particular statement by Mr. MacDougall was discussed?

A. No, there was not.

MR. KAUFMAN: What was the answer again?

MR. VANCE: The answer was, no.

THE WITNESS: Let me clarify that. There may have been a Board meeting, but you asked me if that matter was discussed and I said no, it was not.

MR. VANCE: Do you wish to go off the record?

THE WITNESS: Yes.

(Off the record.)

MR. VANCE: Let's go back on the record.

MR. ORMAN: Could we have a clarification of your question, Mr. Holtzman. Are you asking whether there was a Board meeting prior to Mr. MacDougall's statement or after Mr. MacDougall's statement?

MR. HOLTZMAN: I believe the question, Mr. Chairman, was at or about the time and I meant to encompass a period of time immediately preceding, concurrent with or shortly after that particular statement of which the substance thereof was discussed.

MR. VANCE: I have a note of word after --

THE WITNESS: May I then respond. I am sorry. I understood the question to mean prior to and that is what I responded to.

There was a Board meeting following this statement at which the statement was discussed and as a result of that Board meeting, the statement was, it is by the Board and an apology was made by Mr. MacDougall who made the statement as an individual.

Q BY MR. HOLTZMAN: And would you state for us the substance of the discussion concerning Mr. MacDougalls's

statement at the Board meeting to which you refer.

A. The substance of the discussion was that it was an improper statement and it should be dissolved and it was.

Q. You have now told us the entire discussion as you recall it?

A. You asked --

Q. You have told us the entire discussion as you recall it?

A. Yes.

Q. I take it this discussion is a matter of record in the minutes of the particular meeting that you refer?

A. The facts of the discussion will be. I don't recall offhand how detailed the minutes will reflect it.

Q. I take it that the minutes were prepared and maintained with respect to both meetings to which we are referring; is that correct?

A. Yes.

MR. ORMAN: The Guild will stipulate that the minutes are kept for all Board meetings.

MR. VANCE: But under the sustance of any matter that was discussed?

MR. ORMAN: I would imagine.

THE WITNESS: We do not keep a transcript of the minutes, but the minutes are very cursory, dealing largely with motions made.

Q. BY MR. HOLTZMAN: In any event, as far as the minutes were prepared and are presently maintained with respect to both of those meetings?

A. Yes.

Q. In addition to that, Mr. Furia, does the Guild maintain a file of press releases which it issues for cause to be issued?

A. I believe it does.

Q. And specifically, would it keep a file of press releases with respect to any statements made during the course of these disciplinary proceedings of and concerning the proceedings?

A. I just don't have any knowledge of that. To my knowledge, we keep a file of press statements made about anything that concerns the Guild and I would think that would include what you are talking about.

Q. Who in the Guild has custody of that file to your knowledge?

MR. ORMAN: At this point, I object, Mr. Chairman. I think it is irrelevant as to who keeps the Guild's files.

MR. VANCE: I think you have established the point that you are trying to establish, Mr. Holtzman.

MR. HOLTZMAN: I take it that the objection is sustained then?

MR. VANCE: Yes, sustained.

Q. BY MR. HOLTZMAN: Mr. Furia, the decision and order of the Board of Directors in the proper setting pertaining to Mr. David Victor provided among other things that his expulsion would become effective 90 days after the termination of the Guild's strike of the Association of Motion Picture Producers, Inc., it is a fact, is it not that the

purpose of the suspension of the effective date of termination was to insure that the Guild would have some plausible basis for jurisdiction over him so that these further disciplinary proceedings could be invoked?

MR. ORMAN: I object, Mr. Chairman. Why the Guild would do anything in respect to a prior hearing is irrelevant to this hearing.

MR. VANCE: Yes, that is sustained. We have established that attitude.

MR. HOLTZMAN: May I have a couple of more questions to complete the record in this regard.

MR. VANCE: Please.

Q BY MR. HOLTZMAN: Were you aware, Mr. Furia, of the purpose of the extended effective date of Mr. Victor's termination?

MR. ORMAN: Same objection, Mr. Chairman.

MR. VANCE: Sustained.

MR. HOLTZMAN: I have no further questions.

MR. VANCE: Thank you.

Now, are we ready to release Mr. Furia? We have gone out of sequence in the presentation of the Respondent's case.

Mr. Orman, as I recall, you were presenting your case.

MR. ORMAN: I will now go back to presenting my case.

At this point --

MR. HOLTZMAN: Mr. Chairman, I invite the Committee's attention to the fact that it is about 1:00 o'clock in the

afternoon, I think we should have some feelings as to how long we are going to go or whether or not we are going to break for lunch.

MR. VANCE: What would your indication of your case would be how long?

MR. SUSMAN: If Mr. Orman will accept my statement and the stipulation that the testimony of Mr. Shane was the only witness that we presented at the last hearing with regard to the activities of Mr. Victor during the period that we was at Universal Studios during the course of the strike applied to the May-June period as well as to the April period, that would be the extent of our firm of testimony.

MR. VANCE: Mr. Shane, I understand, is the business affairs man and --

MR. SUSMAN: And he is away. So, if Mr. Orman will accept that, we will not have to recess for a later date when Mr. Shane may be available.

MR. ORMAN: The Guild will stipulate that Mr. Shane's testimony may be read and accepted by the Trial Committee as if he were here before the Trial Committee and now testifying.

MR. HOLTZMAN: And is that also applicable to the April, May and June period as well as to the period in April to which he specifically testified?

MR. VANCE: Yes, I would assume.

MR. ORMAN: So stipulated.

MR. SUSMAN: We would also ask formally for the record that we are offering as part of our case, the entire record pertaining to the first hearing involving Mr. Victor, i.e.,

the transcript of the proceedings of May 21, 1973, the notice that was sent to him in the exchange of correspondence, the appeal that was taken and, of course, we have asked also that the minutes of the Board meeting at which the Board made its decision as well as the recommendations, finding, et cetera of the Trial Committee also be offered as part of the record.

MR. VANCE: Now, you raised that issue before, Mr. Orman.

MR. ORMAN: Yes, the Guild has stated before, the Guild stipulates publicly that the Trial Committee may take Committee notice of any public, and previous public record concerning Mr. Victor and when it takes notice and you may incorporate it as part of this record insofar as it is relevant to this record.

MR. VANCE: Is that acceptable, Mr. Susman?

MR. SUSMAN: I don't know what the ruling is of the Committee. I would like to know what the record consists.

MR. VANCE: The ruling is that we shall take notice of the matters pertaining to Mr. David Victor's previous hearing as far as it pertains in connection with Mr. Shane, for example, at this present hearing.

MR. HOLTZMAN: Well, I don't think that was --

MR. ORMAN: The Guild has stipulated that Mr. Shane's testimony may be considered --

MR. VANCE: Yes, we understand that.

MR. ORMAN: -- as applicable to the entire period of April, May and June as if he was here now testifying.

I don't want to repeat myself, but there is some

more limited stipulation as to the Guild with respect to the other matters that Mr. Susman said this Trial Committee should incorporate into the record.

MR. VANCE: This is a matter of record, is it not?

MR. ORMAN: Pardon? I am saying what is an obvious fact that the Trial Committee may take Committee notice of any prior proceedings and the public records relating thereto and may take cognizance of it as it is relevant to this particular hearing.

MR. VANCE: That was my understanding.

Is that quite clear?

MR. SUSMAN: Semi clear, actually. Essentially, what -- I assume this Committee has not read the transcript. Essentially, what Mr. Shane testified to during the period of the strike and the time when Mr. Victor was present at the studio, he acted as the executive producer of the show; he was connected with and he performed no writing services; that is in essence of the most significant part of his testimony.

I just want the stipulation to be clear that all of his testimony relating to those matters were also applicable to the entire period as well as to the specific period that he testified to.

MR. ORMAN: Yes.

MR. VANCE: That was my understanding.

Let's address ourselves to the question of time.

MR. ORMAN: Mr. Chairman, as you can see, there are four more witnesses of the Guild which none of them will take

very long. It all depends upon counsel for Mr. Victor. I think the Guild can present its case in twenty minutes, five minutes apiece.

MR. SUSMAN: We won't be long; I will assure you.

MR. VANCE: Do you have any extensive closing arguments that you wish to present?

MR. SUSMAN: No.

MR. VANCE: Very well. I will rule that we will proceed so far as we can until we come to a conclusion.

Mr. Orman.

MR. ORMAN: At this time, Mr. Chairman, I would like to introduce into evidence by stipulation as Guild's Exhibit No. 1, the original Strike Order dated March 5, 1973, a copy which has been received by opposing counsels and members of the Trial Committee.

MR. HOLTZMAN: No objection.

(Whereupon the document entitled Notice to All Members Strike Order dated March 5, 1973 was marked as Guild's Exhibit No. 1 and is attached hereto.)

MR. ORMAN: And Guild's Exhibit No. 2 the original Rules for the Conduct of Members during the Strike dated February 20, 1973.

MR. HOLTZMAN: No objection.

(Whereupon the Rules for the Conduct of Members during a Strike dated February 20, 1973, was marked as Guild's Exhibit No. 2 and is attached hereto.)

MR. ORMAN: As Guild's Exhibit No. 3, the Amended Rules for the Conduct of Members during a Strike dated May 1, 1973.

MR. HOLTZMAN: No objection.

(Whereupon the document amending the Rules for the Conduct of Members during a Strike dated May 1, 1973, was marked as Guild's Exhibit No. 3 and is attached hereto.)

MR. ORMAN: As Guild's Exhibit No. 4, the Writer's Credit Record of David Victor.

MR. HOLTZMAN: That is a document consisting of three pages.

MR. ORMAN: Three pages.

MR. HOLTZMAN: We have no objection. We will point out for the record which is probably obvious that the vast bulk of matters set forth in the record to which counsel has averted occurred during the period prior to 1960 with only four credits thereafter the most recent which being in June of 1971, a period of two years prior to any matter involved in these proceedings.

MR. VANCE: So noted.

(Whereupon the document entitled Writer's Credit Record was marked Guild's Exhibit No. 4 and is attached hereto.)

MR. ORMAN: And as Guild's Exhibit No. 5, a several-page document with reference to Mr. David Victor, one side of which contains a record of Member's Payment and the other side of which contains Member's Work Record.

MR. HOLTZMAN: No objection.

Again, we point out that substantially all of the matters set forth long, long proceeds any period relevant to the present charges.

MR. VANCE: Very well.

(Whereupon the aforementioned documents entitled Member's Credit Record and Member's Payment Record were marked as Guild's Exhibit No. 5 and is attached hereto.)

MR. ORMAN: The Guild will now call Mr. Carey Wilber.

CAREY WILBER,

called as a witness on behalf of the Writers Guild testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Mr. Wilber, will you state and spell your name for the record.

A. Carey Wilber, C-a-r-e-y W-i-l-b-e-r.

Q. And you are a member of the Writers Guild of America, West, Inc.?

A. Yes.

Q. How long have you been a member of the Writers Guild?

A. About 20 years.

Q. During the recent strike, did you have any official duties with the Guild?

A. Co-chairman of the Strike Services Committee.

Q. Will you tell us what your duties were in regards to the Services Committee?

A. To assign, supervise, establishment of supervision around strike facilities.

Q. Can you tell us whether or not you supervised the installation of the picket lines around Universal Studios?

A. I did.

Q. Can you tell us during the period that you supervised this installation of picket lines?

A. All through the strike, from the first day that the strike was going on.

Q. Is it your testimony that there picket lines at all times during the course of the strike?

A. Picket lines were maintained at Universal, I believe, the first four or five weeks on the basis of 6:00 in the morning until 6:00 P.M. in the afternoon, after that from 9:00 A.M. to 6:00 P.M. There were sections, however, in which we did put up extra picket lines at an earlier hour.

Q. Is it your testimony that there were pickets there five days a week?

A. Five days a week at the main studios and on weekends at the Universal Tour.

Q. Did there ever come a time during the course of the strike there wasn't picket lines five days a week at Universal Studios?

A. Yes, I believe the last three or four weeks of the strike, the picket lines was on a spot picketing, mass

picketing basis.

Q. And were notices sent to members of the Guild stating that we are now going on a spot basis, but, nevertheless the picket lines are still in effect?

A. I don't recall the nature of the notices. We simply called people from the strike headquarters and gave them their assignment.

Q. I show you a notice dated May 15, 1973, and ask you if this notice was sent to any members as far as you know?

MR. VANCE: May we have a copy of that?

THE WITNESS: Yes, I recall that.

MR. ORMAN: I would like to have this notice marked into evidence as Guild's Exhibit No. 6.

MR. HOLTZMAN: Mr. Chairman, I am simply going to point that there is no evidence before the Committee, no direct evidence that the matter set forth in this document has ever been brought to the attention of David Victor.

If the sole purpose of it is to show that this is something issued by the Guild on the date it bears, we have no objection to it coming in under that basis.

I simply want to make sure that no inference may be drawn that he ever saw it, a copy was ever delivered to him and that he has knowledge its contents.

MR. VANCE: In what form was this matter sent out?

MR. ORMAN: Well, this is what I am about to get at. It was sent out in the regular course of mailing.

To the contrary of Mr. Holtzman's statement, one of the most basic fundamental rules of law in all jurisdictions

in all 50 states is that letters which are sent out in the regular course of business are that are supposed to be sent out in the regular course of business have been sent out in the regular course of business and it has been duly received by the intended recipients.

Rules of law, many are not highly technical. They are not games. They are based upon logic. The normal logic is that the letters were supposed to be mailed, it is mailed and it is received. It is a rebuttable presumption. If Mr. Victor wants to come before this Trial Committee and testify credibly he could rebut this presumption, but to the contrary, this is a presumption that may be drawn by this Trial Committee that this notice was sent out and this notice was duly received by Mr. Victor.

MR. VANCE: Are you questioning that, Mr. Holtzman?

MR. HOLTZMAN: I haven't heard any evidence on it. The witness says that he thinks that it was sent out. He hasn't said by whom, what steps were taken to insure that the mailing list was completed, what steps were taken to complete the physically placement of it in the mail to each member.

The foundation has not been laid.

MR. ORMAN: May we go off the record.

MR. HOLTZMAN: He was not the person to do it.

MR. ORMAN: Mr. Chairman, may we go off the record.

MR. VANCE: Off the record.

(Off the record discussion.)

MR. VANCE: Back on the record.

MR. ORMAN: Mr. Chairman, I find myself duly corrected.

Mr. Chairman, may we go back on the record.

MR. HOLTZMAN: On the record, Mr. Chairman. I have not objected to the admission of the Guild's Exhibit No. 6 into evidence. I have observed so that no inappropriate inferences may be drawn that there is nothing in the record at this point to indicate that the Guild's Exhibit No. 6 was sent to Mr. Victor or received by him.

As far as I am concerned, if counsel wants to lay that particular foundation at a later time, I feel that he should do so and I feel that we should proceed at this time as to the witness not having received it.

MR. VANCE: Continue, please.

MR. ORMAN: I will lay a foundation at a later time.

Q. Mr. Wilber, can you tell us about how often picketing after there was a change in the method of picketing Universal as to how often Universal was picketed.

A. To the best of my recollection, I would say, there was two mass picket lines at Universal.

Q. Do you know what dates those mass pickets were?

A. I don't recall. This was on the spot picketing.

Q. Mr. Wilber, can you tell us whether or not you ever saw David Victor at Universal during the course of the strike?

A. On two occasions.

Q. Can you tell us how you knew it was Mr. David Victor?

A. I knew it was Mr. Victor.

Q. Can you tell us the first occasion that you saw

Mr. Victor?

A. The first occasion was on a special picket line at an earlier than usual hour at Universal because we had received information that Mr. Victor and several other members of the Writers Guild attempted to go into their offices.

I believe this was on or about April 14. Subsequent to this, we put out another small special picket line from an early hour for the purpose of observing other violators going in and we saw David Victor at that time and at that time, I was in the company with Tony Spinner and Art Weingarten.

Q. You have now testified as to the occasion that you have seen David Victor?

A. Two occasions that I remember.

Q. And do you remember any conversation that Mr. Victor might have said on those occasions?

A. Well, my first contact with Mr. Victor was first of a telephone conversation.

Q. No, I don't want to get into that.

A. The only thing that we said the first time we had it, we had a mass line. I saw David going in. I shouted, "Scab going in."

On the second occasion, I don't remember exactly what I said, but it wasn't complimentary.

MR. SUSMAN: Just a moment. If I may, Mr. Chairman, I think we are now proceeding from April 14 forward. The witness hasn't given any date. I would like to know if the first occasion was before or after April 14.

MR. VANCE: Yes.

THE WITNESS: I believe this was on April 14.

Q. BY MR. ORMAN: Do you think if you looked at the reports you made out during the strike, would they refresh your memory?

A. It would help.

Q. Do you want to look at them?

A. Yes.

Q. Well, this was -- the first occasion was on the 14th and the second occasion was on the 18th, that was along about the 14 days.

MR. VANCE: The day on that occasion was the 16th, was that a Monday?

THE WITNESS: I don't recall.

Q. BY MR. ORMAN: Did Mr. Victor reply to your statements?

A. No, he did not.

MR. ORMAN: I have no further questions of the witness, Mr. Chairman.

MR. HOLTZMAN: Just a very few questions, if I may, Mr. Chairman.

CROSS EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Wilber, let me make sure that I understand the sequence of the picketing at Universal.

You testified, as I understand it, that a picket line was created at the onset of the strike and continued for

the first four or five weeks, started quite early in the morning, you said starting at 6:00 A.M. and running to 6:00 P.M.

A. 6:00 A.M. to 6:00 P.M.

Q. Right. And that picket line was maintained for the first four or five weeks; is that right?

A. As close as I can recall.

Q. That will carry us then to about March 6 to the 10th of April thereabouts?

A. Probably.

Q. No more than a couple of days either way from that, would that be correct?

A. I couldn't be sure. I would have to check back in all of the records of the rosters.

Q. To the best of your recollection, the 6:00 A.M. to 6:00 P.M. picketing didn't run more than four or five weeks?

A. That is right.

Q. And thereafter picketing was maintained for a period of time at Universal from 9:00 A.M. to 6:00 P.M.?

A. From 9:00 A.M. to 6:00 P.M., right.

Q. So persons entering the gate before 9:00 A.M. would not cross the line; is that correct?

A. Not quite true because we did establish a special picket line at the studio prior to 9:00 A.M.

Q. All right. And this occurred once or twice during the course of the next four or five weeks?

A. This occurred several times.

Q. With the exception of the special picket lines that

you just discussed, persons entering Universal would not cross the line after the first four or five weeks; is that correct?

A. So far as I know.

Q. Okay. Can you remember any date on which a special picket line was established earlier than 9:00 A.M. after the first four or five weeks?

A. Yes, I think we put out a line on the date April 16.

Q. All right. Is there any other date?

A. We had during the week, I believe, we had several special lines, my own personal knowledge was a line on April 16 where I was on it.

Q. And these are the only special lines on occasions of which you are personally aware?

A. I think we had other special lines, but I was not on them.

Q. Now, the situation then, the 9:00 A.M. to 6:00 P.M. line with the special occasions, you averted to remained in effect until about May 15; is that correct?

A. I would say so, yes.

Q. And after May 15, is it correct, is it not, that the only picket lines at Universal City Studios consisted of two occasions of mass picketing which occurred roughly between 11:30 A.M. and 1:30 P.M.?

A. I am not sure of your dates there, but I know that in the last three or four weeks, we were on spot picketing basis.

Q. And by spot picketing basis, you mean essentially once a week arrangements were made for mass picketing at one studio?

A. That is correct.

Q. And in riding the circuit, you got back to Universal Studios during this period?

A. I would say the second time was by popular demand.

Q. None more than twice in any event?

A. I can't swear to that, but I think that is it.

Q. Now, you stated in response to Mr. Orman's question that special picket lines were established at Universal after the first four or five weeks to accomplish this 6:00 to 9:00 A.M. line up situation to observe, to especially observe -- persons entering the premises; is that correct?

A. That is correct.

Q. Did you participate in the decision to establish those picket lines?

A. Yes, I did.

Q. All right. Is it a fact, is it not, that the special lines were established on the 16th and 18th as you testified for the purpose of determining whether David Victor was entering Universal Studios?

A. It was not only David Victor, it was David Lovingston, John Epstein, a man named Saunders, Sy Chermak and I can't think of others, but I think there are one or two others who we were given reasons to believe that were going through the picket lines.

Just so I am clear, Mr. Victor was one of those whom you were concerned?

A. Yes.

Q. All right. Who else participated in the decision to establish a special early morning picket line to observe whether Mr. Victor and the others were entering Universal Studios?

A. So far as I can recall, it was my decision. It was a custom to the staff of the Guild headquarters and approved that I had information previous that these people were going in and that we set up a line to make certain that they were -- there were proof that they were going in.

Q. And was there any particular reason why you wanted to determine whether or not these particular gentlemen were going in?

A. Certainly. In violation of strike rules.

Q. Who told you that?

A. We have published strike rules that said that you could not participate or provide services for any struck facilities.

Q. You knew that at the time, did you not, that Mr. Victor was an executive producer employed by Universal Studios with respect to three different series?

A. That had nothing to do with it.

Q. You knew that?

A. Yes.

Q. You knew he was an executive producer?

A. He was an executive producer by hearsay.

Q. You knew that [illegible] was a member of the Guild?

A. Yes, because I've seen him participating in Guild meetings.

Q. Okay. You knew, did you not, that Mr. Victor was performing solely the functions of an executive producer and was not writing during that period?

A. I did not know what functions he was performing in there.

Q. Did you know the status of any of the others, Mr. Lovingston, Mr. Epstein, Mr. Saunders and Mr. Chermak?

A. I only knew that they crossed the picket line and that they were members of the Writers Guild.

Q. And also that they were all producers, were they not?

A. Again, as far as Mr. Lovingston is concerned, I don't know what his position was. I only knew his position by hearsay. I have had no dealings with any of the above gentlemen in an executive capacity except Sy Chermak.

Q. And what hearsay information did you have as to Mr. Lovingston's job slot at Universal?

A. I did not know what his job was and I still don't know.

Q. Mr. Epstein?

A. I heard that he was a producer on the Marshall show.

Q. Mr. Saunders?

A. My understanding was that he was some kind of a story editor on -- oh, Lord -- I can't think of the show.

Q. And Chermak?

A. Mr. Chermak, I knew was the executive producer of Ironside.

Q. And it was your decision then to establish special early morning picket line to verify the reports that you received that these gentlemen were coming early?

A. Yes.

Q. Did you look for anyone else?

A. Pardon?

Q. Did you look for anyone else who would be crossing the picket lines?

A. We figured if these gentlemen started to cross, we might get a flood of others including writers looking for scab assignments.

For that reason, we put a heavy picket line on the first day, the 16th so that members of the Guild would be able to recognize any member of the Guild crossing the picket line whom the regular pickets would not be familiar.

Q. Other than these four producers and this one story editor, were any other members of the Guild recognized crossing the picket line on the 16th?

A. I don't know.

Q. How about the 18th?

A. I don't know.

MR. HOLTZMAN: I have no further questions.

MR. DONOVAN: Mr. Chairman, may I?

MR. VANCE: Yes, surely.

MR. DONOVAN: On the 16th or the 18th when you saw

David Victor crossing the line, was Weingarten and Spinner with you on both of those occasions?

THE WITNESS: I don't -- I am not sure whether Weingarten and Spinner were with me on that first occasion. The first occasion was a mass picketing, that is we had, I think, about 40 pickets in the area and probably 10 or 12 that remained at the time that Mr. Victor crossed.

MR. VANCE: Any further questions from the Committee?

Thank you, Mr. Wilber.

MR. ORMAN: For the record, Mr. Chairman, May 16, 1973 --

MR. HOLTZMAN: I assume you mean April.

MR. ORMAN: Thank you. I stand corrected.

MR. HOLTZMAN: We will so stipulate.

MR. VANCE: Thank you very much for that clarification.

MR. ORMAN: My next witness is Mr. Sy Salkowitz.

SY SALKOWITZ,

called as witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Mr. Salkowitz, your name has already been given and spelling for the record.

You are a member of the Writers Guild?

A. Yes, I am.

Q. How long have you been a member of the Writers Guild?

A. Since 1956.

Q. During the recent strike, have you had any official duties during the strike?

A. Yes, I did.

Q. Will you tell us what those duties were?

A. I was a member of the Negotiating Committee.

Q. Can you tell us whether or not you have served on the picket line at Universal Studios?

A. Yes, I did. I was asked. I believe it was on April 15 I received a call from strike headquarters asking if I would join a special picket line Monday morning, April 16, at Universal Studios. I agreed to do so and arrived at Universal Studios at approximately 7:00 A.M., April 16, 1973.

Q. And while you were on the picket line, can you tell us whether or not you observed David Victor?

A. I did observe David Victor at 8:48 A.M.

Q. Can you tell us where he was?

A. I was serving on the picket line at the main gate at Universal Studios when his car drove up. He was stopped by the traffic signal and it was necessary for his car to set there for a few moments until the pickets had cleared the way and the light changed so that he could go through.

During that time, I observed Mr. Victor whom I have known for approximately 15 years, and it was no mistake that it was him.

Q. Did you say anything to him or he say anything to you?

A. There was no comments exchanged at all that I recall.

Q. Was that the only time that you saw David Victor during the Universal Studios' strike?

A. Yes, that was it.

MR. ORMAN: I have no further questions, Mr. Chairman.

MR. VANCE: Mr. Holtzman.

MR. HOLTZMAN: No questions.

MR. SUSMAN: No questions.

MR. VANCE: Questions from the panel?

MR. SHER: I don't know whether I should go on record or not, but am I to understand the line of questioning by counsel -- I am just curious -- is counsel trying to establish that this line was set up just to get certain producers or that this line was set up -- is that this line of questioning? I am just curious?

MR. HOLTZMAN: I think the record is abundantly clear at this point that the line was set up -- special lines on April 16 and April 18 were set up for purposes of getting certain producers and anyone else who might be trapped in the process, but they were looking for Mr. Epstein, Mr. Saunders, Mr. Chermak and Mr. Victor and Mr. Lovingston.

MR. SHER: That is what your purpose is in asking that question?

MR. HOLTZMAN: Yes.

MR. SHER: That is what I wanted to know.

MR. HOLTZMAN: I think the record has so demonstrated.

MR. ORMAN: Mr. Chairman, may I ask a question of the witness?

MR. VANCE: Go ahead.

REDIRECT EXAMINATION

BY MR. ORMAN:

Q. Can you tell us what your understanding was for the purpose of the picket line?

A. Yes. The phone call that I received on April 15 indicated to me that several members of the Guild may cross the picket line on the next day. We were asked to be on the special picket line to discourage them from doing this.

MR. ORMAN: I have no further questions.

MR. VANCE: Do you wish to question further?

MR. HOLTZMAN: No further questions.

MR. VANCE: Is Mr. Siegel the last witness for the Guild?

MR. ORMAN: No, Mr. Chairman. Mr. Siegel will testify and then later on, hopefully, I will have someone to come and lay foundation for Guild's Exhibits.

LIONEL E. SIEGEL,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Mr. Siegel, will you please give and spell your name for the record.

A. Lionel Siegel, L-i-o-n-e-l, middle initial E, S-i-e-g-e-l.

Q. And Mr. Siegel, you are a member of the Writers

Guild?

A. Yes.

Q. How long have you been a member of the Writers Guild?

A. Thirteen and a half years.

Q. And during the recent Guild strike, did you have any official duties with respect to the strike?

A. Yes, I was a picket and also a picket captain at Universal Studios.

Q. While you were picket captain at Universal Studios, can you tell us whether or not you ever saw David Victor?

A. Yes, the morning of April 30.

Q. 1973?

A. Right.

Q. Can you tell us what time of day that was?

A. About 9:30 in the morning.

Q. Can you tell us where you were and where he was at that time?

A. I was at the time -- standing on the sidewalk at the main gate drive entrance to Universal.

Q. Then you saw Mr. Victor?

A. He drove in crossing the line onto the lot.

Q. How did you know it was Mr. Victor?

A. I have worked for him. I have known him for many years.

Q. Did he say anything to you?

A. No.

Q. Did you say anything to him?

A. No.

Q. Was that the only time that you saw Mr. Victor crossing the line during the recent strike?

A. There was another time. I am not exactly sure about the date, but it was a few days later. It could have been three or four days after that.

Q. Did you see Mr. Victor at Universal Studios --

A. Same time, driving on the lot.

Q. You were picketing and he came through in his car?

A. Right.

Q. Was there any conversation between you and he at that time?

A. No.

Q. And when you say three or four days later, that was since -- the first time you saw him was April 30, 1973. Is it your testimony that the second time you saw him was some time early in May, 1973?

A. Right.

MR. ORMAN: I have no further questions. Mr. Chairman.

CROSS EXAMINATION

BY MR. SUSMAN:

Q. Mr. Siegel, I believe you testified that the first day was specifically April 30, 1973.

How do you fix that date?

A. I reported it by telephone and the information that he was seen crossing the line.

Q. Is there some record to establish the April 30 date?

A. I think the record that I made.

Q. Is there any record that establishes the second occasion?

A. I don't have it. There could be. The system was that I would telephone to strike headquarters the name of those people who I saw drive on.

Q. As far as you know, this one record that shows April 30, but there is no other record to establish the second day.

A. I presume there is a record, but I don't have it.

MR. SUSMAN: Do you have it, Mr. Orman?

MR. ORMAN: No, I don't. It doesn't mean that the Guild doesn't have the record.

Q. BY MR. SUSMAN: Let me ask you this question.

It is conceiveable to me as I sit here that the April 30 could have been the second day; isn't that true?

A. No, April 30 was the first time that I saw him drive on.

Q. Does the information that you phoned show that that was the first time?

A. For me personally, yes.

Q. May I see the record?

A. It is up to Mr. Orman.

MR. ORMAN: Again, the Guild will let you see this April 30 without stipulating that you have a right to see the record and without precluding us from objecting in another

case. It is just that the Guild is leaning over backwards to cooperate with the attorneys for the Respondent.

Q. BY MR. SUSMAN: I have here documented all the picket -- report of unauthorized picket lines, subject member David Victor, observing Lee Siegel dated April 30, 1973, location main gate Universal and it says at above time and date, the time is 9:30, picket and black Mercedes and then it gives the license number, but there is nothing on there that says or indicates that it was the first or second time. That is the point that I am trying to make.

A. Oh, I don't think that I would have stated to them whether it was the first time or not. I know.

Q. Do you know why there isn't a record of the second occasion that has been filed on this point?

A. As I say, I don't know if there isn't a record.

Q. Do you know why it hasn't been produced or hasn't been found?

A. No, I don't.

Q. Do you know why this one was and the other wasn't?

A. No. If I could respond to that, once somebody was seen crossing the line and it was reported, subsequent to that when they were seen, I personally feel that records got a little sloppy. That is not to say that they didn't cross nor that they weren't observed, but it was almost like after the fact. The fact being that they crossed. I think that lots of people who picketed just shrugged like there goes David Victor and like big deal. There were others too, but I am not trying to put him above anyone else, but I

think that was what happened on the picket line, like yeah, we know about him, meaning it had been reported and the Guild knows.

To keep on reporting people were crossing seems to take a sense of those people picketing kind of redundant.

Q. But there were occasions were there not, where there several reports on different days submitted in writing on people crossing the picket lines?

A. I am sure.

MR. VANCE: Mr. Susman, is it your position that Mr. Victor didn't cross the picket line except on the specified dates?

MR. SUSMAN: My position is that we are here to hear the Guild's case on what they proved so far. I haven't heard anything but April, 1973 and that happens to be the precise date, the month of April, 1973, that was a subject of the first charges.

MR. VANCE: What was the substance of the testimony of Mr. Shane which you put into evidence?

MR. SUSMAN: The substance of Mr. Shane's testimony was during the period that the Guild evidence indicated that -- I think it was one occasion; it may have been several, but I don't recall specifically -- the Guild's evidence at the first hearing was the Mr. Shane was at the studio. He was performing the functions of the executive producer on Marcus Welby and other producing functions which he had during that particular period.

MR. VANCE: During that one specific occasion.

MR. SUSMAN: I have it here.

Let's go off the record for a couple of seconds.

(Off the record.)

MR. SUSMAN: Mr. Shane's testimony dealt with the only day that in which any evidence was presented was with regard to Mr. Victor coming into the studios and that was on April 10, 1973, as I recall.

MR. VANCE: Thank you.

MR. ORMAN: I am through examining Mr. Siegel.

MR. VANCE: I asked a question in connection with --

Do you have any further questions? I am sorry.

MR. SUSMAN: No.

MR. VANCE: You are excused.

MICHAEL FRANKLIN,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Mr. Franklin, will you give and spell your full name for the record, please.

A. Michael Franklin, F-r-a-n-k-l-i-n.

Q. Are you are director of the Writers Guild, are you not?

A. Correct.

Q. And you attended an NLRB hearing in which David Victor gave testimony?

A. I did.

Q. Can you tell us approximately what date this was?

A. The latter part of May, 1973.

Q. Can you tell us whether or not Mr. Victor gave any testimony with respect to his then duties as executive producer at Universal Studios?

MR. HOLTZMAN: Please answer that question yes or no.

Is there an answer on the record?

MR. VANCE: I am sorry, Mr. Franklin, I didn't catch your answer.

MR. HOLTZMAN: I simply want a yes or no answer to that question and no further exposition.

MR. ORMAN: I believe the answer was, I think,he did.

MR. HOLTZMAN: I'm going to object first on the grounds that there is no foundation as to time, place, persons, particularly as to no foundation as to date.

Secondly, I think, it should be noted that we are referring to a proceeding which was reported by a court reporter and it would seem to me that the best evidence of what occurred on that day is not the hearsay of this witness as to what portions that he might recall, rather than the official transcript of the proceedings.

MR. ORMAN: May I respond, Mr. Chairman?

MR. VANCE: Yes, sir.

MR. ORMAN: With all due respects, Mr. Holtzman, I must take issue. If we called upon the transcript that would be hearsay without laying the foundation of the reporter

testifying as he taken -- that he took the transcript, that would be hearsay.

To the contrary, Mr. Franklin testified -- Mr. Franklin is testifying as to the statements made by Mr. Victor at an NLRB hearing some time in late May, 1973. I cannot think of anything that is more direct or that anything that is certainly not hearsay.

MR. HOLTZMAN: I don't want to start debating the law on a proceeding were rules of evidence is not in effect. In case any body is concerned, the transcript would be admissible under the past testimony with exception of the hearsay rule and what is being offered here now is plainly pure hearsay. That isn't the point.

The point is -- isn't the point that the rules of evidence don't apply.

Mr. Chairman, we have a situation where there is a reporter's transcript. My point is simply this, if there is good evidence available, why take secondary evidence.

Why try to get the recollection of a witness who is the executive director of the prosecutor, if you will, in these proceedings. The witness, with all respect to the Guild, is interested in the outcome, is biased. We have the objective of the court reporter. Why look for secondary evidence of dubious following if it is material.

MR. ORMAN: Two points. One, in the first place, assuming that we were going by the rules of evidence, you could not present the testimony of the reporter unless you could demonstrate that other better correct evidence was not available.

Mr. Franklin is here; he is available; he is testifying, one.

Two, counsel is stating that Mr. Franklin's testimony is not credible because it is biased. Well, that certainly goes to the weight of his evidence and this Trial Committee will take that into consideration and if they determine that his evidence is not credible, it is then discarded, but they certainly may hear his direct testimony as to what Mr. Victor said.

MR. VANCE: Do you have any further observation, Mr. Holtzman?

MR. HOLTZMAN: I want to remind the Committee that I made a series of objections that there is no foundation laid as to the time, place or person present. I think we ought to know when this occurred and where and what persons were present.

MR. VANCE: Can you be more specific about the date of the hearing of the NLRB?

THE WITNESS: The first hearing was at the Federal Building in West Los Angeles located on Wilshire Boulevard in West Los Angeles. The precise date, I stated that it was in the latter part of May, I would say it was a few days after May 21, to the best of my recollection.

Q. BY MR. ORMAN: And this was an NLRB hearing?

A. Yes.

MR. ORMAN: Mr. Chairman, I submit this is sufficient foundation and I would ask the Chairman to rule that Mr. Franklin may go on with his testimony.

MR. VANCE: Do you have any objection?

MR. HOLTZMAN: No, we made our objections.

MR. VANCE: Yes. I so rule that you can continue with your line of questioning.

Q BY MR. ORMAN: Can you tell us what Mr. Victor with respect to his duties as an executive producer at the Universal Studios during the strike?

A Yes. Mr. Victor in response to various questions testified that he was an executive producer with -- at Universal, that he had been a number of years, that there were three series under him, that is, that he was the executive producer. They were Owen Marshall, Marcus Welby and a new one, I believe, it is entitled Griff.

He described his duties as executive producer in the following way that he was responsible for the overall production of these shows, that there were under him so-called line producers and that they worked through him and he hired and fired various personnel involved in these productions.

In response to a question as to whether he did any writing, his testimony was that he had done -- that over the years that he had been limiting his writing to the creation of new programs and that in this manner, he wrote formats or stories for the purpose of pilots or for the creation of new series.

In response to questions as to whether he was doing any writing at the time of that hearing at Universal, he testified that the only writing he did was what he referred to as A through H writing and his reference was in the

Collective Bargaining Agreement A through H, he said that --

MR. VANCE: Excuse me, Mr. Franklin. I would like a clarification of that.

What is your understanding of what he meant?

MR. SHER: By A through H?

THE WITNESS: A through H is the following and I refer to the Writer's Guild Collective Bargaining Agreement, Article I c that defines a writer and in the definition of a writer, it says "that the following services shall not constitute such a person for writing hereunder (A) Is cutting for time; (B) bridging material necesitating by cutting for time; (C) changes in technical or stage directions; (D) assignment of lines to other existing characters occasioned by cast change; (E) changes necessary to obtain the necessary acceptance or legal appearance; (F) casual minor adjustments in dialogue or narration made prior to or during the period of principal photography. (G) Such change in the course of production that are made necessary by unforseen changes, i.e., the elements accidents to performers, et cetera; (H) instructions or directions or suggestions for or writing made to writers regarding story or teleplay.

Now, Mr. Victor stated that the A through H writing that he was doing was limited to Marcus Welby because there had been half a dozen scripts left over from Marcus Welby from the prior scene.

He stated that they had no scripts for Owen Marshall and they had no scripts for Griff.

That was the substance of the dialogue of his

testimony,as I recall, and with respect to what he was doing at Universal.

MR. ORMAN: I have no further questions.

MR. VANCE: Mr. Susman.

CROSS EXAMINATION

BY MR. SUSMAN:

Q. The testimony which was eluded was taken toward the latter part of May, if I understand you right?

A. Yes.

Q. And was Mr. Victor testifying with regard to the activity of the executive producer during the period of the strike?

A. Yes.

Q. He did not designate what, if any, writing he had done, he just eluded to the permitting areas under A through H; is that right?

A. Not precisely. He eluded to the A through H writing that he was doing in this context. In response to a question whether he was doing A through H writing at the present time, at the time of the hearing, his response was that they had no scripts for Griff or Owen Marshall. They did have half a dozens scripts left over from the prior season of Marcus Welby and there A through H was on scripts for Marcus Welby.

Q. My point was that he did not refer to specific things that he did, he just referred to whatever he did as being within the permitted area?

A. That is correct.

Q. Mr. Franklin, do you attend the Board meetings of the Writers Guild?

A. Do I attend the Board meeting of the Writers Guild?

Q. Yes.

A. Yes.

Q. Did you attend the Board meeting at which the Board acted on recommendations of this Trial Committee in connection with disciplinary proceedings?

A. Yes.

Q. Were you present at the Board meeting of June 15, 1973, which the Board acted on the Trial Committee recommendations with regard to David Victor?

MR. ORMAN: Objection. Mr. Chairman, based upon the previous, I think, my previous objection on that line of questioning which has no relevance to the present hearing.

MR. VANCE: Sustained.

Q. BY MR. SUSMAN: Mr. Franklin, is there any record that exists in the Writers Guild that regards to the basis for the $50,000 fine so-called imposed upon Mr. Victor?

MR. ORMAN: Same objection, Mr. Chairman, with an additional objection that the cross-examination goes beyond the direct examination. That is not permissible.

MR. VANCE: Sustained.

Q. BY MR. SUSMAN: Mr. Franklin, is there any record maintained in the Writers Guild which indicates why unlike all the other people disciplined, Mr. Victor's expulsion was

suspended for 90-days instead of being immediately?

MR. ORMAN: Same objection, beyond the scope of direct examination and also it has no relevance to the Trial Committee hearing.

MR. VANCE: Sustained.

Did you say that was your last question, Mr. Susman?

MR. SUSMAN: I so stated and it is.

MR. VANCE: Mr. Holtzman.

MR. HOLTZMAN: No further questions.

MR. VANCE: I have a question.

Mr. Franklin, you stated that this hearing NLRB was two or three days after the May 22, I believe --

THE WITNESS: Somewhere in that area.

MR. VANCE: In his testimony, did Mr. Victor imply that on that date that he was working at Universal Studios --

THE WITNESS: Yes.

MR. VANCE: -- contributing to the A through H category or writing?

THE WITNESS: Yes.

MR. VANCE: I have no further observation.

Is there anybody else?

MR. ORINGER: Before Mr. Franklin goes, did we ever establish to Mr. Holtzman's satisfaction about the matter about mail?

MR. ORMAN: We are going. That will be my last witness.

MR. SUSMAN: Incidentally, the document that refers to the NBA's -- the 1970 agreement is between the Writers Guild

and the Producers Guild?

THE WITNESS: Correct.

MR. VANCE: If no further questions, thank you.

May we go off the record for a moment.

(Off the record.)

MR. ORMAN: May we go on the record, Mr. Chairman?

MR. VANCE: Yes, we will resume the record.

MR. ORMAN: The Guild's next witness is Lois McGuire.

LOIS MCGUIRE,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q. Mrs. McGuire, will you give and spell your name for the record.

A. Yes. Lois McGuire, L-o-i-s M-c-G-u-i-r-e.

Q. Mrs. McGuire, you work for the Guild, do you not?

A. Yes.

Q. Will you tell us whether or not you are in charge of seeing that the mailing goes out?

A. I am.

Q. And you have people working underneath you?

A. Yes, I do.

Q. And they all work under your direct supervision and control?

A. Yes.

Q. Can you tell us -- I show you a document which is dated May 15, 1973, and up above in someone's handwriting, it is indicated 5/15/73 and I ask you whether or not you have ever seen that document before?

A. Yes, that came out of my mailing bag.

Q. And you keep a record of the regular course of business, do you?

A. Yes, I do.

Q. Can you tell us in whose handwriting that is?

A. That is Nancy Goldstein's handwriting. She is the head of the mailing department.

Q. Can you tell us the significance of her handwriting?

A. The significance of her handwriting is that I am aware at all times the mail that is in the mailroom to go and the date that they are to go out and when the mailing has been run on the Multilith and folded and stuffed, depending on the bulk of the mail and placed and run through the postage meters and placed in canvas bags provided by the Post Office Department.

After those bags are on the corner by the mailbox right down here, I receive a duplicate or a copy of what has gone out and Nancy has always written mailed and that date and that is put away in my box immediately that the bags are down at the corner by the post box and that is her handwriting and I know the mail is in the bags and down at the corner.

Q. And you know that mailing goes to all of the members of the Guild?

A. It says dear member and that goes in the box like

that.

Q. And you are in charge insuring that the mailing goes out to all members?

A. Yes.

MR. ORMAN: Mr. Chairman, I would like to have received into evidence as Guild's Exhibit No. 6, this mailing that went out to the Guild members which is dated May 15, 1973.

MR. VANCE: Any objection?

MR. HOLTZMAN: Mr. Chairman, I didn't object before and I don't object now. I am simply going to say that I don't see any direct evidence of the steps that were taken to see that this particular letter was mailed to David Victor or anyone else.

MR. VANCE: I think the witness stated that it goes to all members.

MR. HOLTZMAN: I have heard no statement as to the procedures of the employee as to whether the addresses were handwritten on the envelopes or by an Addressograph or what. Frankly, I am a little curious about placing a bag on the ground near a mailbox. That is another story. I think we ought to have something in the record as to what steps were taken.

MR. VANCE: Fine.

Q. BY MR. ORMAN: Mrs. McGuire, will you tell us how the addresses, how you got the addresses on the envelopes?

A. They are addressed by an Addressograph. We have drawers of plates back there. We have them in different arrangements, in alphabetical order and non-profit arrangement.

The full membership is in either alphabetical or non-profit. That doesn't pertain to this, but all members addresses are in there. It is run through a machine.

MR. VANCE: You said a phrase that I didn't get, is it full-profit?

THE WITNESS: Non-profit. It is fourth class mail, this would not have gone out as fourth class mail, but it was to get to the members very quickly, but that is how every member gets, receives their mail. It is printed by an Addressograph.

Was there another question? It was run through the postage machine and everybody receives the mail.

MR. VANCE: Are you satisfied, Mr. Holtzman?

MR. HOLTZMAN: I still haven't objected.

MR. VANCE: Are there any further questions that you wish to oppose --

MR. ORMAN: No. Thank you, Mr. Chairman.

MR. VANCE: Thank you, Mrs. McGuire.

MR. HOLTZMAN: May I have just a couple of questions to the witness, please.

MR. VANCE: Yes.

CROSS EXAMINATION

BY MR. HOLTZMAN:

Q This set of drawers of Addressograph plates that you referred to, are they separated in any way with respect to your classes of membership as for example current membership, associate members and the like?

A. Some of them are. We have them in different arrangements. For instance, they will be tabbed according to current and noncurrent and that sort of thing, but this is only for the purpose of election mailings. Current members can vote and the noncurrent didn't vote, but for something like this, it is sent out to the entire membership. There's no reason to differentiate between them.

Q. Did you have any way of determining from your mailbook whether a particular thing was mailed out to all members or only those current?

A. Only that it says dear member which, I think, it says -- of which refers to all members.

Q. So, the notation at the top here mailed 5/15/73 plus the salutation dear member would then indicate to you that this was sent to the entire membership and not only the members entitled to vote?

A. There would be no reason to send to people who could not vote.

Q. My question is, is there anything on this piece of paper that says or advises you that that was sent to the entire membership?

A. Yes.

Q. That is those two items that I referred to?

A. Yes, also the attachment that was in my box. If you want me to bring that in --

Q. What also goes into this paper -- what do you call it, the mailbook?

A. Yes.

Q. What is the mailbook? Would you describe it to us?

A. Well, for instance, in May of this year there were other correspondence mailed out and there were other cards prior to this and there was another mailing later after the 15th of May which also has Nancy's handwriting. There are cards in there so that we will have a record of what went out.

Q. Now, does that contain anything besides the general mailing that went out to the membership?

A. No.

Q. Do you maintain a book of press releases?

A. I don't.

Q. Does somebody in the Guild to your knowledge?

A. I would think that the credit department would.

MR. HOLTZMAN: I have no further questions, Mr. Chairman.

MR. VANCE: Thank you, Mrs. McGuire.

(Off the record.)

MR. VANCE: We will resume the record.

Mr. Orman.

MR. ORMAN: Mr. Chairman, the Guild rests.

MR. VANCE: Mr. Holtzman.

MR. HOLTZMAN: Mr. Chairman, at this time, we renew for the record each and all of the motions which we have heretofore made both in writing and verbally during the course of the Guild's case and request that they be ruled upon at this time.

We feel that the foundation of the motions have

been sufficiently established at this point if there were any doubts at the outset.

MR. VANCE: We will take your motions under consideration. Thank you.

Does that rest your case?

MR. HOLTZMAN: We request, if the Chairman please, that the Constitution and By-Laws of the Guild be included as part of the record in this proceeding as if they were set forth at full.

MR. VANCE: Certainly.

MR. HOLTZMAN: I would like at this point to introduce into evidence as Respondent's Exhibit A, a three-page document consisting of a letter from John A. Mendonsa, resident counsel, Writers Guild of America, West to Mr. David Victor dated April 14, 1973, to which is affixed a document denominated Notice of Disciplinary Hearing and charges.

I would also like to introduce into evidence Respondent's Exhibit B, a two-page document, first page of which is headed In the Matter of Writers Guild of America, West, Inc. versus David Victor and the second page of which is headed Findings of the Trial Committee and Decision and the Order of the Board of Directors, and the document bears a date of June 25, 1973.

I might state that these are the documents that we have referred to several times during the case of this proceeding and I am confident that the record indicates that they are already the subject of Committee notice and I am placing these in the record simply to insure that the record

is complete in this respect.

And incidentally, with Mr. Orman's indulgence, we are going to copy these later on -- make copies for the record because these are my own.

And may we identify in the record as Respondent's Exhibit C of the transcript which has been previously subject of Committee notice bears the transcript of the proceedings in the matter of the Writers Guild of America, West, Inc. versus David Victor dated May 21, 1973.

Again, this is already subject to Committee notice and I would simply like to make sure that we have a proper recognition in that regard and the balance of the Respondent's evidence consists of stipulations that are already of record which contains Mr. Shane's testimony and at this point, the Respondent rests.

MR. VANCE: Are there any further evidence to be presented to the Trial Committee in this matter?

MR. ORMAN: No, Mr. Chairman, but, of course, the Guild would like to make its closing argument.

MR. VANCE: Very well, if you will proceed with the closing argument.

MR. ORMAN: Has Respondent completed its case?

MR. HOLTZMAN: We have rested.

MR. ORMAN: Thank you very much.

I think the Guild has amply demonstrated that Mr. David Victor has violated strike -- Sections 1, 12 and 13 of the Rules. I call your attention to Section 12, of course, is crossing a picket line and Guild's Exhibit 6 which is

the last exhibit the Guild put in. It points out that the Guild is ceasing regular picketing for a very valid reason. It states in one of the paragraphs as you will -- if, in fact, in the first paragraph, "As you will see by the enclosed list, we now have over 150 signatories to the Guild's new 1973 contract. At some locations, there are now more signatories than struck companies. With this in mind, the Board has decided that industry-wide picketing is no longer necessary."

Then it goes on to caution all writers and members that they may not come, of course, the picket line is still necessarily if not physically in effect within the meaning of the Guild's Rules and Regulations. The picket line is in effect and members may not pass this picket line and, of course, the Trial Committee will take Committee notice that the Guild is still on strike at Universal. The Guild still considered that there was a picket line at Universal and that no member could pass this picket line even though it may not -- the picket line may not have been there at all times.

At this point, I am going to anticipate an argument that may be made by the attorneys for the Respondent and I am going on this anticipation because they have made it in the past and they say unless there is physically people out there picketing, there cannot be any picket line, therefore, there cannot be any violation of Section 12.

In past occasion, they have gone on to demonstrate saying that this is a problem, unique, this physical picket line for other purposes, though. They indicated that unless

you have some physical pickets at all times, you cannot or may not say for the purpose of the National Labor Relations Act, you may or may not have a picket line for state reasons, but this Trial Committee is not limited to what is a picket line for other purposes.

It takes jurisdiction for what is a picket line for Guild's purposes and for Guild's purposes based upon the testimony of the witnesses and also based upon Guild's Exhibit 6, the Guild considered that it had a picket line at all times at Universal Studios and you may not pass.

Now, in terms of Section 13 in which it is alleged that Mr. Victor rendered services and that is how Section 13 reads, "Render services for Universal."

You have heard testimony of the various Guild's witnesses that he was obviously going -- seen going into the Universal Studios and also, I might state, that the Section says you may not go there unless you get Guild's permission in advance and certainly there has been no evidence to show that he got Guild's permission in advance, but even more important, you have heard the testimony of Mr. Franklin stating that Mr. Victor was doing Section A through H writing.

This is credible testimony and I will show you the logic for this and I don't think opposing counsel has really seriously questioned this because under the Guild's Minimum Basic Agreement, a person may do A through H writing and he will not get paid therefore and Mr. Victor was definitely saying, well, excluded from the Minimum Basic Agreement for this type of writing, therefore, I am permitted to do it and

I submit this is apples and oranges. This Minimum Basic Agreement is absolutely a document that is drawn up pursuant to the opposing economic strength of the producers on the one hand and the Guild on the other. The Guild obviously, if it had the economic strength would have said we say A through H writing is writing. In fact, it describes it as writing. It says that we will -- writers will not get paid for it. That is all it means. Well, for all purposes of getting paid, is one thing and for the purpose of the Trial Committee hearing, a writer may not perform the services. These are writing services. He may not perform them.

To really draw an analogy would spell it out, what is the sole purpose of the Guild's strike was to say that we want writers to be paid for A through H writing. This was the sole purpose of it. And then he said that Mr. Victor has the sole right to go through the Guild's line,saying at such time that you get into the Collective Bargaining Agreement, I may go through the line performance. Of course not. This is the reason why the Guild drew up Section 13. It talks in terms of services. It talks -- counsel has always demonstrated in the past -- it talks about common sense. Common sense indicates there is no such thing as "a pure writer" whatever that is, pure writing services and producing services. There is no white hats and black hats in this industry.

Logic dictates that all you have is gray hats. Logic dictates that a person acting as a producer as a definition for what he is doing -- even apart from Mr. Victor's

definition -- the definition of what he is doing, he is engaged in writing services. I mean there is no serious doubt that a producer picks up a script. There can be no serious doubt that Mr. Victor picked up a script during the course of this strike. There is no serious doubt that he read the script. Mr. Victor must have made at least a mental note to himself that this character is in conflict with the conception of a character in a running series and some day after the strike, I must notify the writer and tell him to change this philosophy. Behind this, he would not talk this way, he would not act this way. He could look at a script and say he must make a change, amendment, so forth and so on. He can make a mental note to himself and say I am going to need a lot of scripts after the strike and he can say that I am going to get writer X because he knows my show and he is going to do it.

By definition of what you do in this industry, there is no such pure thing. By definition, a producer must be doing in the larger sense what is called writing and that is the reason the Guild had put in Section 13. I submit it has been amply proven that Mr. Victor has gone through the Guild's picket line. I submit the test by his own testimony as Mr. Franklin has brought out, he has certainly been doing A through H writing and I submit that he has therefore violated Section 13.

MR. VANCE: Is that the completion of your closing argument, Mr. Orman?

MR. ORMAN: Thank you. I might have rebuttal.

MR. HOLTZMAN: Mr. Chairman, in the light of the lateness of the hour and the hunger pain of each of the members of the Trial Committee as well as counsel, I am going to be immercifully brief. This is the closing argument of Mr. Holtzman.

This is the point in time the proceeding where we step back, take a look at the charges, take a look at the evidence and attempt to determine whether to what extent any charges of which this Committee can properly take cognizance of have been proved.

I express outrage at the outset of the proceedings concerning the unfairness of the duplicative proceedings against Mr. Victor. I am not going to repeat my argument in that regard, but that outrage still persists. I am equally outraged at some of the positions that have been taken by counsel in his closing argument and let me point some of these out very, very briefly.

There are two charges. First charge is that Mr. Victor has crossed the Guild's picket lines at Universal City Studios, Inc., during the months of April, May and June, 1973, without having informed the Guild in advance, et cetera.

Now, as to the month of April, we have pointed out and we are not going to point out again that that was the subject of the first charge set forth in our Exhibit A. It was the subject of the first set of findings set forth. in our Exhibit B and there is no appropriate basis for even considering that matter with respect to a second disciplinary hearing.

I will point out also that substanially all of the evidence that was adduced during the course of this proceeding related to a picket line on April 16 and April 18 and a picket line probably on April 30. It is our position very simply that in regard to that body of evidence, this Committee may not even appropriately take notice. That matter has been tried and determined.

There is a suggestion in the record that one witness that could not find any record to authenticate his date, thought that a few days after April 30, he saw Mr. Victor crossing the picket line. That flimsy, uncertain, hesitant and uncorrobated bit of evidence is the sole bit of testimony under which this man is subject to be convicted. Okay. There is evidence, of course, that the date of the NLRB hearing which was placed a few days after May 21, as I recall, Mr. Victor then testified that he was performing the functions of an executive producer with respect to three series at Universal City Studios and the functions of an executive producer were described, but at that time, the evidence is uncontroverted that there was no picket line in effect. Exhibit 6 makes it clear that the picket line at Universal City Studios was eliminated as of May 15.

Now, and this brings us to the first gross assumption that I want to comment upon. Mr. Orman, to get around that, to make sure that we can talk about crossing a picket line at some time when the man has testified to them working says let's postulate a metaphysical picket line. That is the purpose of Exhibit 6. He says even though the pickets were

not there, since the Guild has decreed that there was a picket line, in effect, we must find that there was a picket line there. He said that you don't need pickets to make a picket line. Now, the argument today was brief, but this is an argument that was made before.

MR. VANCE: Excuse me, it was an argument that was made what?

MR. HOLTZMAN: This is an argument that has been made before, and to us, it is wholly facetious.

Gentlemen, you can't have a picket line without pickets. It is as simple as that. Just for my own amazement, I did a little bit of research last night to try to find out whether there is any basis in any source of material whatsoever whether it is metaphysical enlightment that there can be a picket line, no pickets need to be present.

I started out, and I suppose that it is as good a place as any, with Webster's Third International Dictionary which very neatly defines picketing as a line of workers picketing a place of employment. That to me implies a warm body on the line. Hold it just a second, there is another definition. "A position held by a line of pickets." I also looked at the Random House Dictionary, unabridged dictionary and it says, "picketing a line of strikers or demonstrators serving as pickets," again the necessity for warm bodies.

A picket has been described by Mr. Justice Frankfurter who was alluded to as one of the justices in our Supreme Court by Mr. Orman during the earlier part of this morning's proceedings. It says,"Picketing involves patrol of

a particular locality," that is a patrol unit, warm bodies moving back and forth and without wasting a lot of time on it, the court decision has also required for a picket line to be present, that some patrolling of human beings back and forth at the place where the line is established -- my point is this, you can't have a metaphysical picket line. If there was no picket line at Universal Studios after May 15, 1973, Mr. Victor cannot be convicted of crossing the picket line after that date.

The real importance of this proceeding and we might as well face it squarely, relates not to the picket line charge, but to the charge No. 2, the charge that Mr. Victor has during the month of April, May, June, 1973, rendered services for Universal Studios, Inc., the effect of our stipulation and the effect of the testimony by Mr. Franklin is that at least at some point in time, cognizant by this Committee, whether it be April 16, April 18, or April 30 or May 20, Mr. Victor was rendering service as an executive producer of these three television series, and the nature of an executive producer was clearly described. He supervised all three productions; he supervised line producers. He hires; he fired. He did those other acts which are typical of an executive producer, and in response to a specific question, he said yeah with regard to those six scripts that we had on hand, I performed those services which are excluded by the Minimum Basic Agreement by Section Division A through H.

At this point, Mr. Chairman, I would appreciate

one indulgence on the part of the Committee, although Mr. Franklin described the duties A through H with some degree of clarity, for the sake of the record, I would appreciate it then to reopen in order that we may include in the record by reference the exact text of subdivision A through H of the Minimum Basic Agreement as part of the record.

I so move there would be no objection.

MR. ORMAN: So stipulate.

MR. HOLTZMAN: Thank you. May that be your ruling?

MR. VANCE: It may be the ruling.

MR. HOLTZMAN: All right. Subdivisions A through H of course, relates to those incidental services of a creative nature which are customarily performed by producers in connection with the production of an entertainment vehicle and particularly during the course of the principal photography. Counsel says that A through H is a negotiated thing, but, of course, to an extent it is, but I think it is much more than that. A through H is simply the long standing recognition of this age that producers and directors even actors and actresses participate in their special ways in the creative process and it is a recognition that the performance of this particular function, the A through H function is a proper, appropriate function of a producer or director or of an actor and does not constitute writing and it seems to me that the body of knowledge that this Committee brings to this Committee requires it to recognize.

All right. What is the point of this argument? The point of this argument is that the record demonstrates

conclusively and without contradiction that Mr. Victor performed no function at any time during the strike cognizable by the Committee other than the functions of an executive producer. This Guild does not have jurisdiction over executive producers. This Guild has jurisdiction over writers.

This Committee is not concerned with what Mr. Victor did as an executive producer any more than it would concern itself with performance of acting services by an actor or directing services by a director, the services of a lighting technician or a grip. It simply is a matter with which it cannot fairly be concerned. What's happened here is a practical matter. There is a dispute. A jurisdictional dispute, if you will between the Producers Guild of America and the Writers Guild of America. Mr. Victor is an innocent part of this dispute. He is being charged, and we might as well face this fact, he is being charged not because he produced, because the Writers Guild of America seeks through the agency of this Committee to exact a little bit of tribute, then to obtain a little bit of vengeance against the Producers Guild of America. That's a terribly unfair thing to do to Mr. Victor and in our estimation, is a grossly improper thing to ask of this Committee.

If there was clear cut evidence that this writer was writing in the usually accepted sense of that term, in the sense of the term as defined in the Minimum Basic Agreement during the course of the strike, obviously, this Committee would have power to proceed as it is doing, but all we see is an executive producer of long standing is producing and

this thing sought to be made an example for the purpose of the jurisdictional dispute between the two competing Guilds. This Committee should not involve itself. This Committee has power to make recommendations to the Board. Its recommendations of innocence may not be overruled by the Board. The Constitution and By-Laws so provide. This Committee, I submit, should have the courage to tell the Board that this Committee is not to be involved in matters of this character, recommends an acquittal and should this occur, number one, justice will be done and number two, that decision is never going to be overruled by anybody it can't be overruled.

MR. VANCE: Thank you, Mr. Holtzman.

MR. HOLTZMAN: Mr. Chairman, I appreciate the patience and indulgence of the Committee. The hour is late. I am deeply grateful for their consideration and patience.

MR. ORMAN: May I have just a minute to respond?

MR. VANCE: Yes, indeed.

MR. ORMAN: Thank you. I just want to correct an infactual assertion by Mr. Holtzman. He said that picketing ceased after May 15 on a daily basis, but picketing did not cease after May 15, but picketing did continue after May 15 and there was picketing at Universal at intervals until the end of the strike and this notification went out to the membership and they were informed of this.

Again, I submit for that reason of manpower was because the Guild cannot picket everybody. The Guild can take notice of the fact there are literally hundreds of

producers. It would be physically impossible for the Guild to picket every producer. It does not mean that the Guild does not have the power to use its number one weapon which is a picket line and for the purpose of this Trial Committee hearing, I submit that you have had picketing. Two, again, the Guild would take its own expertise into consideration whether A and H is additional producers work as Mr. Holtzman says or whether or at least some of A to H is reading or writing work and the Guild, if it had the economic strength would demand it be paid for, and ask this Trial Committee to pick up its own expertise as to what it considers of this.

I don't think that there is any evidence of vengeance, et cetera. I don't think the Guild operates that way. I think this Trial Committee, going on the assumption that is not filled with desiratory revenge, and desires to hear this matter and see if any violation has been imposed.

MR. VANCE: Thank you. Are there any further observations?

MR. DONOVAN: Mr. Chairman, is it proper for me to ask Mr. Holtzman one question?

MR. VANCE: I so rule it is.

MR. DONOVAN: I just want to be clear in my mind as to specifically what you are saying.

Apropos of David Victor's statement of May that he was performing his function as an executive producer an apropos of your comment that the Guild's picket line ceased as of May 16 and you cannot have a violation if there is no picket line, the inference that I can only draw from that -- and that is what I am trying to find out if I have this right

in my mind -- is that David Victor, in effect, is saying that he was performing functions as an executive producer as of May 15 on 'cause if, indeed, then the argument of picket lines would lose its force and effect.

Do I understand you correctly?

MR. HOLTZMAN: There is uncontradicted evidence in this record that on April 16, 18 and 30, probably 30th, Mr. Victor crossed the picket line.

MR. DONOVAN: What I am really talking about is in May and so on.

MR. HOLTZMAN: In May, there is no evidence.

MR. DONOVAN: Then I will have to presume that based on Mr. Victor's own statement that he was functioning as an executive producer only after May 15?

MR. HOLTZMAN: Our stipulation is that all times which is the subject of evidence before this Committee, on all the occasions which we have taken testimony on today, the testimony of Mr. Shane shall be deemed to apply and that testimony is that he was an executive producer.

MR. DONOVAN: I am not questioning that at all. My question was only directed to your comments apropos of him going to the NLRB on the 22nd and, in fact, the picketing on a mass basis ceased on the 15th and, therefore, he cannot be guilty of crossing a picket line which does not exist, right?

MR. HOLTZMAN: If the Committee is to consider any occasions during May --

MR. DONOVAN: Yes.

MR. HOLTZMAN: -- the only direct testimony of his having performed services in May was the testimony during the latter part of the month.

MR. DONOVAN: I understand.

MR. HOLTZMAN: And at which time, picketing had ceased.

MR. DONOVAN: I understand. What I am saying that based on Mr. Victor's statement to the NLRB, it seems almost that you have to conclude that he must have crossed the picket line at the beginning otherwise our assumption would have to be that he did not cross the picket line and that is what he meant when he was talking about his duties.

MR. HOLTZMAN: All I can say is there is no evidence when he was talking about his duties on May 24 and May 25. There is no evidence as to anything --

MR. DONOVAN: I understand that, but --

MR. ORMAN: May I be heard, Mr. Chairman?

That is incorrect and even in keeping with the stipulation that Mr. Shane's testimony would be -- the testimony is -- including Mr. Shane's testimony because you won that stipulation -- is that all times from April through June, the entire period of this strike, April 14 through June 24, Mr. David Victor did go there five days a week to perform --

MR. SUSMAN: That is incorrect. That is completely incorrect. The stipulation was that to the extent Mr. Victor was present at Universal Studios during the period in question to the extent that he was present and then he rendered his

services as an executive producer. There is no stipulation that he was there during May, June or at any other time.

MR. ORINGER: Excuse me. I would like to ask a question at this point. That is completely incomprehensible. I don't understand. Will you explain it?

MR. SUSMAN: I don't know when he was there or when he wasn't there. It is up to the Guild to prove that he was there and that he did the actual charge --

MR. ORINGER: I would like to make a comment at this point because it is a very grave matter because the Committee is going to be retiring in a very short period of time and this Committee -- I don't think has made the point yet how seriously it takes this matter.

As far as the Committee is concerned, your client is a member in good standing in the Guild. This is as far as the deliberations are concerned.

MR. HOLTZMAN: I question that.

MR. ORINGER: Please let me finish. For the purposes of our deliberation before the Committee and as for all practical purposes, he is a member in good standing. May I explain this to you. There is something that I think you should know. I would like to talk to you for a moment about what I think your obligation to your client should be.

I am disgusted at something here. We are equally obliged to protect the interest of the Guild and of your client. I hope you understand that. I hope there is no question at all at this time in your minds. Now, as far as we are concerned, when you appear here, Mr. Victor appears

here and we are, in fact, in anything, we are under the obligation of leaning over backwards to see that Mr. Victor's case is presented properly.

Now, we understand that some times there is some kind of dialogue which is engaged in from necessity because as you have mentioned several times that you are establishing a record, we cannot be overly concerned with that record. We are going to retire to deliberations and render some kind of a judgment that might affect the career and life of a member of our Guild to whom we are obliged.

I heard testimony -- this boggles my mind up -- I am a layman, please indulge me in this. We have heard testimony to the effect that somebody at Universal, a witness ofyours has said that to the extent that such and such a person, Mr. Victor, was present at all, he was present performing services as an executive producer. Now, I assume as a reasonable man, you did not call this testimony forth just out of the blue, but in reality you felt that Mr. Victor was never present, but just in case somebody out in the street should think he was present, why he was. That is Alice in Wonderland.

We have to retire and deliberate. Number one, was Mr. Victor present in the studios? If so, for what purpose and we have to take into consideration everything that might possibly mitigate such an act if it did occur on Mr. Victor's part. Now, I would frankly appreciate as a member of this deliberating Board if you would stick to a position and make the best possible case for your client. If you want to argue,

now that he wasn't there, but if he was, he was doing this, but I can't follow this and I am incapable of making a fair judgment for your client.

MR. SUSMAN: We are the defendants in this case. All we are required to do is to refute evidence of the charges against our client. We are not here to supply deficiencies in the Guild's position. Now, Mr. Victor isn't here because he didn't want to subject himself to the embarrassment and the humiliation of having to justify his conduct as an executive producer before this Guild. In his considered judgment, none of the services that he performed and in our considered judgment as well, at any time whether it was in April or May or subsequent date when he might have been present at the studios where writing services that come within the jurisdiction of this Guild. Now, if you are throwing a burden upon us of coming forth with events and activities beyond the purview of the Guild's charges or the Guild's evidence, we are under no obligation. So if you --

MR. ORINGER: Sir, I am making a plea to you and I am going to to the extent that I feel strongly is going to lead me to enter a point that has been in dispute before with prior hearings.

I observe -- I tell you this because I am making it as a plea and not to throw a burden upon you -- if Mr. Victor was sitting here, I would say Mr. Victor, would you please so that we can act fairly towards, would you please tell us anything at all that might serve your case. I would not rest content with permitting a case to be presented

that was merely a technical representation of the Guild's case. I am going to give you an example of this previous hearing.

MR. SUSMAN: Please do.

MR. ORINGER: I sat on a Trial Board Committee of which a member was acquitted.

Just a moment. I would urge you because I think it is pertinent to the case here.

If you want, let's go off the record on it.

MR. HOLTZMAN: Let's stay on the record. I want this discussion to stay on the record.

MR. ORINGER: I am not trying to enter -- I am trying to tell you that --

MR. VANCE: I think this is a debate.

MR. ORINGER: It is not a debate at all. It is not a debate at all.

The Committee was attempting at a certain point to elicit testimony above the lawyers objections, that testimony which helped us to acquit the defendant. I don't see how it is the beyond the purview of this Committee to sit here and have an attorney to cross his hands and say well, we are not required to do such and such.

MR. SUSMAN: You must have misconceived your function. You are not a trier of fact to determine what kind of case the Respondent or the Guild is supposed to put on. Now, don't forget, this is the second shot that the Guild has taken of Mr. Victor on essentially the same charges. It is for Mr. Victor to determine whether or not he wants to subject

himself in an imposition before the Guild.

MR. VANCE: Barry, we really have an argument here.

Is there any further argument?

MR. ORMAN: Yes, yes, yes. If you will bear with me about two or three minutes --

MR. KAUFMAN: It seems to me that in a way you must have misconceived our function. We are here as a Trial Committee, but we are also here as members of the Screen Writers Guild. This trial was supported by the majority of the membership and it was duly voted by that majority. We are only here to determine a violation and when I say determine, we are not hanging judges and I don't think that this has very much to do with an accusation towards the Guild of vengeance and if my voice seems to crack it is because I am getting a little sore about this and I think that this is rather outrageous. I think as you two sit here, and you have sat across from us before, you know goddamn well that in terms as to the Committees there hasn't been an iota of vengeance and we represent a Guild and I deny that there is vengeance on their part for Mr. Victor or certainly anyone who is represented as I have been as for the Guild on such a case and this I find distrubing. That is all I want to say, but I wanted that in the record.

MR. VANCE: Thank you.

MR. HOLTZMAN: Mr. Chairman, may I respond to that?

MR. SUSMAN: I am just as distrubed as you are, Mr. Kaufman. When a man like David Victor is fined $50,000 and then in addition is called back for a second hearing on

essentially the same charges, now, you can put down what description you may want, but it is disturbing.

MR. SHER: Can we go off the record for a minute?

MR. HOLTZMAN: I am the one who used the word vengeance and I want it very clear what I had in mind. That statement, that charge was directed not to this Committee and not to any member of this Committee. I want to dispel any inference that I am casting any aspersions on this Committee as it is sitting here this afternoon.

Insofar as that pertains to the official position taken by the Writers Guild of America in charging Mr. Victor for his functions as a producer, convicting and fining him $50,000, an enormous sum by any standard and by charging him a second time on essentially the same facts, I will stick to my guns with all difference to the distinguished members of this Committee, but that accusation is against the Guild and the Board and those persons who made the decision to prosecute in this hearing held here today and not the distinguished members of this Committee.

MR. VANCE: Thank you, Mr. Holtzman.

You have a last observation, Mr. Orman?

MR.ORMAN: Yes, I would like to make an observation that we have agreed that the Trial Committee can take cognizance of the previous transcript with respect to Mr. Victor and I will give for the Trial Committee's use, I will give the transcript so that it may produce -- read the transcript and just now, I would like to point out that Mr. Shane, the witness for Respondent has testified as to with respect to

Mr. Victor and the date of that hearing is May 21, which encompasses the charges of today's present charges and a question is asked of this Mr. Shane on page 119 beginning with line 6 -- no, no, I will begin with line 11. Line 11, page 119 of this May 21 transcript, Mr. Shane is testifying.

"Q. Is Mr. Victor engaged in production activities at the studio?

"A. Yes.

"Q. Had he done any writing for a period of years?

"A. He has not.

"Q. What are the series on which he has either been the producer or the executive producer at the studio during the past several years?

"A. He has been the executive producer of Marcus Welby, and he has just commenced services as executive producer of Griff.

"Q. Has he also been the executive producer of several Movies of the Week?

"A. Yes, he has."

Now, turn to page 133 of the transcript and beginning at line 16, there is a question from Mr. Poe, one member of the Trial Committee,

"Mr. Shane, to the best of your knowledge, during April, was Mr. Victor planning or in the process of creating a

new series or a Movie of the Week?

"THE WITNESS: He is not planning any new series. His present concern is the production of the three series that he is assigned to for the upcoming season.

"MR. POE: And he has a stock pile of scripts, I assume?

"THE WITNESS: In some cases, there are some scripts, yes."

Now, page 135, line 2 of Mr. Knoff, another member of the Trial Committee.

"MR. KNOFF: Mr. Shane, Mr. Poe referred to three pilots that are in preparation.

"THE WITNESS: No, three series. Three series.

"MR. KNOFF: And Mr. Poe asked you if there had been some stock piling and I believe your answer was that he had?

"THE WITNESS: I said there are some scripts some of the shows.

"MR. KNOFF: On each of the three pilots?

"THE WITNESS: Two of the shows are renewals of ongoing series -- Marcus Welby and Owen Marshall. There are some scripts for each of these series. The other is

Griff, which Mr. Victor will be the executive producer of. I don't believe there any scripts for that show, but I am not positive.

"MR. KNOFF: But as far as the two ongoing shows, there hadn't been a change in that script made since March 6 by anyone?

"THE WITNESS: None of them have circulated, nor have there been any writers employed on them."

MR. ORMAN: I submit to the members of this Trial Committee that this witness for the Respondent, Mr. Shane is talking in the present tense as of May 21. I also submit that when you take that in conjunction with Mr. Franklin's testimony of Mr. Victor's testimony at the NLRB hearing, Mr. Victor was talking in that tense, in the present tense. Mr. Victor was stating as of that time, again, that I am not working on these shows. I am doing what I consider as work. This Trial Committee will make its own determination whether that is true, but certainly the evidence has shown and certainly you have your transcript as of May 21 and obviously there is not one day during this period of time that Mr. Victor is working on these series during a continual period of time.

The testimony is that we know that he started to go on April 16 and so on and so on. This Trial Committee is entitled to make logical deductions. You don't prove every

single thing. It cannot be done. This Trial Committee has evidence that Mr. Victor has been going in since April 16 through May 21. They know that he has been going in several times specifically and you can make a logical deduction he has been going in every day. To make a logical deduction, that he is working on the screening scripts. You can make a logical deduction that -- if the Trial Committee believes that A through H is writing, then you can make a logical deduction that he has violated Section 13.

MR. ORMAN: I have no further questions.

MR. VANCE: Any further questions?

MR. HOLTZMAN: No further questions.

MR. VANCE: This matter will be taken under submission by the Trial Committee. Once the Committee has deliberated, it will submit its written recommendation as to guilt or innocence with the recommendation for discipline action, if any, to the Board of Directors.

Under the Guild's Constitution and By-Laws, it has the authority to either accept or reject or modify this Committee's recommendations.

In order for this Committee to make its recommendations of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Trial Committee that the Respondent be acquitted of the charges.

If there be nothing further, this hearing will stand adjourned.

(Whereupon the hearing concluded at 3:10 P.M.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, WILLIE B. BROWN, Notary Public for the State of California, certify:

That the foregoing transcript of proceedings was taken before me at the time and place therein set forth and recorded by me stenographically; thereafter, my notes were transcribed into typewriting under my supervision.

In witness whereof, I have subscribed my name and affixed my seal this 1st day of November, 1973.

Willie B. Brown

Notary Public in and for
the State of California

OFFICIAL SEAL
WILLIE B. BROWN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires June 10, 1974